TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1951

9

No. 444

WILBUR C. KING, JERRY W. CARTER AND RICHARD A. MACK, AS AND CONSTITUTING THE FLORIDA RAILROAD AND PUBLIC UTILITIES COMMISSION, APPELLANTS,

vs.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ATLANTIC COAST LINE RAILROAD COMPANY, ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF FLORIDA

FILED NOVEMBER 23, 1951

Probable Jurisdiction Noted January 2, 1952

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IN UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF FLORIDA, TALLAHASSEE DIVISION

Civil Action File No. 292

WILBUR C. KING, JERRY W. CARTER and RICHARD A. MACK, as and constituting the Florida Railroad and Public Utilities Commission, Plaintiffs,

vs.

THE UNITED STATES OF AMERICA, Defendant

COMPLAINT—Filed September 16, 1950

Jurisdictional Allegations

1. This action is one to temporarily restrain, temporarily and permanently enjoin, and set aside and annul an order of the Interstate Commerce Commission, as hereinafter more fully appears. The action is brought under the provisions of Title 28, United States Code, Sections 1336, 2321, 2322, 2323, 2324, 2325 and 2284.

Parties

2. The aforesaid Wilbur C. King, Jerry W. Carter and Richard A. Mack are the duly elected, qualified and acting commissioners of the Florida Railroad and Public Utilities Commission and as such constitute said Commission.

3. The Florida Railroad and Public Utilities Commission, herein sometimes called the Florida Commission, is an agency of the State of Florida and a branch of the governmental authority of said State and is specifically charged under the laws of Florida with the duty of making reasonable and just intrastate rates of freight and passenger tariffs to be observed by the railroads, railroad companies and [fol. 2] common carriers doing business in the State of Florida over their respective lines.

4. The principal office of plaintiffs is in Tallahassee, Florida, the capital of the State of Florida, and in the judicial district and division aforesaid.

5. The United States of America is made defendant herein in accordance with the provisions of Title 28, United States Code, Section 2322.

Interstate Commerce Commission

6. The Interstate Commerce Commission is a commission and agency of the government of the United States of America, created by Act of Congress, February 4, 1887, and the powers and duties of said Commission are defined in the Interstate Commerce Act, as amended, Title 28, United States Code, Sections 1 to 27, inclusive.

Purpose of Action

7. The purpose of this action is to restrain and enjoin the operation and enforcement of, and set aside and annul a Report decided May 4, 1950 and a Final Order dated July 25, 1950 of the Interstate Commerce Commission in a proceeding before that Commission entitled "Increases in Florida Intrastate Rates", under I. C. C. Docket No. 30140, affecting intrastate freight rates and charges in the State of Florida. Said Report was made a part of said Final Order and copies of said Report and Order are attached to and made a part of this complaint as Exhibits A and B, respectively.

Record in I. C. C. Docket No. 30140

8. Accompanying this complaint and by reference made a part hereof are duly certified copies of those parts of the record of the aforesaid proceeding before the Interstate Commerce Commission, material to a determination of the [fol. 3] issues presented by this action, described as follows:

(a) Petition on behalf of Railroads operating in the State of Florida, dated December 3, 1948;

(b) Order of Investigation, dated January 5, 1949;

(c) Transcript of Hearing (complete transcript);

(d) Exhibits 1 to — (all exhibits);

(e) Report of Interstate Commerce Commission, decided May 4, 1950;

(f) Petition for Rehearing of Florida Commission, dated June 19, 1950;

(g) Order of Interstate Commerce Commission denying petition for rehearing, dated July 25, 1950;

(h) Final Order of Interstate Commerce Commission, dated July 25, 1950.

Said parts of said proceeding will be referred to hereinafter collectively as the Record.

Related Proceedings Before Interstate Commerce Commission

9. On December 5, 1946 the Interstate Commerce Commission issued its final order in a proceeding before that Commission entitled "Increased Railway Rates, Fares and Charges, 1946" under I. C. C. Docket Ex Parte 162, 266 I. C. C. 537, and thereby authorized, insofar as we are concerned here, an increase in interstate rail carrier basic rates and charges with certain specified exceptions.

10. On July 27, 1948 the Interstate Commerce Commission issued its final order in a proceeding before that Commission entitled "Increased Freight Rates, 1947" under I. C. C. Docket Parte 166, 270 I. C. C. 403, and thereby authorized, insofar as we are concerned here, an increase of 25 per cent in interstate rail carrier freight rates and charges with certain exceptions.

[fol. 4] Proceedings Before the Florida Commission

11. Certain of the railroads operating in the State of Florida, by various petitions to the Florida Commission, requested said Commission to authorize general increases in the intrastate rates and charges of said railroads in the State of Florida corresponding to the increases in interstate rates and charges which are applicable to rail transportation to, from and between points in the State of Florida as authorized by the Interstate Commerce Commission in its Dockets Ex Parte 162 and 166 as aforesaid. Said petitions were considered by the Florida Commission in two of its dockets and were disposed of by said Commission in a series of orders.

12. In Docket No. 1538 of the Florida Commission the

petitioning railroads operating in Florida requested authority to increase their intrastate freight rates and charges and their intrastate passenger fares in amounts corresponding with such increases as were authorized in I. C. C. Docket Ex Parte 162.

12.1. On March 11, 1947, after hearing, the Florida Commission entered its Order No. 1443 in its Docket No. 1538 and thereby granted the full increases requested by said railroads except that no increases were allowed on (a) logs moving to the mills, (b) wet phosphate rock moving from the washer to the drying plant, (c) wastewoods, such as stumps, knots and limbs, moving to the retorts or recovery plants, and (d) sugar cane moving to the mills. Also, increases on pulpwood were limited to 9 per cent on the Ex Parte 123 rates. All of such exceptions were on raw materials moving to processing plants. The full increases were allowed on the outbound finished products. A copy of this order appears as Appendix 2 to the Petition on behalf of the railroads in the Record accompanying this complaint.

[fol. 5] 12.2 In said Order No. 1443 the Florida Commission included in its findings, among others, that the basic freight rates and charges increased or continued in effect by said order to the extent therein found and approved in detail would be just and reasonable, but that the full amount of the increases in the form proposed in the petition of the railroads had not been shown to be just and reasonable in respects not therein approved.

13. In Docket No. 1574 of the Florida Commission the petitioning railroads operating in Florida sought general intrastate increases similar to the increases approved in I. C. C. Docket Ex Parte 166.

13.1 On April 9, 1948, after hearing, the Florida Commission entered its Order No. 1466(A) in its Docket No. 1574 and thereby granted the full 20 per cent increases in effect at that time under orders of the Interstate Commerce Commission in its Docket Ex Parte 166, with the following exceptions: (a) No increases were allowed on protective services; (b) No increases were allowed on wastewoods, stumps, limbs, branches, etc., to Pensacola, Florida; (c) No increases were allowed on sugar cane from the fields to the mill at Clewiston; (d) No increases were allowed on fertilizer and fertilizer materials; (e) Increases

on road aggregates were limited to ten per cent; and (f) Increases on class rates and rates made in relation thereto were limited to 10.25 per cent. A copy of Order No. 1466(A) appears as Exhibit No. 164 of the Record accompanying this complaint.

13.2 In its Order No. 1466(A) the Florida Commission found, among other things, that in order to provide an adequate and efficient transportation system to meet the needs of commerce and in order that said railroads be able to meet increased wages, the additional payroll taxes incident thereto and increased cost of materials and supplies, increases in the basic intrastate freight rates and charges [fol. 6] of said railroads with certain exceptions, should be authorized; that except as otherwise specifically provided all basic intrastate freight rates and charges of said railroads should be increased as aforesaid and when so increased said rates and charges would not be in excess of a just and reasonable basis; and that said increases would have the effect of materially increasing the revenues of said railroads for the purposes aforesaid.

14. On November 13, 1948 the Florida Commission issued its Order No. 1466(C) in Docket No. 1574 and continued until July 1, 1949 the increases granted in Order No. 1466(A) with the same exceptions described above. A copy of Order No. 1466(C) appears as Appendix 3 to the Petition on behalf of the railroads in the Record accompanying this complaint. By subsequent orders of the Florida Commission said increases and exceptions were continued in effect until the further order of said Commission.

15. By the aforesaid orders of the Florida Commission the railroads operating in Florida have been granted by the Florida Commission on their intrastate traffic in Florida, and are presently applying on such traffic, the same increases in freight rates and charges and passenger fares as were authorized by the Interstate Commerce Commission in its Dockets Ex Parte 162 and 166, with the exception of the last 5 per cent granted by the Interstate Commerce Commission in its final order in Ex Parte 166 and the commodity and class rates above described.

The Proceeding in I.C.C. Docket No. 30140

16. On December 3, 1948 eight of the fourteen railroads operating in Florida, namely: Atlanta and Saint Andrews Bay Railway Company; Atlantic Coast Line Railroad Company; Florida East Coast Railway Company (Scott M. Loftin and John W. Martin, Trustees); Georgia and Florida Railroad Company (W. V. Griffin and H. W. Purvis, Trus-[fol. 7] tees); Georgia Southern and Florida Railway Company; Louisville and Nashville Railroad Company; St. Louis-San Francisco Railway Company and Seaboard Air Line Railroad Company, filed with the Interstate Commerce Commission their "Petition on behalf of the Railroads Operating in the State of Florida", hereinafter called the railroads, and therein alleged that as a result of the refusal of the Florida Commission to grant the same increases in their intrastate rates and charges as the Interstate Commerce Commission granted in its Dockets Ex Parte 162 and 166 as aforesaid, the rates and charges which the railroads are required to maintain for intrastate application in Florida cause undue and unreasonable advantage, preference and prejudice as between persons and localities in intrastate commerce, on the one hand, and interstate commerce on the other hand, and undue, unreasonable and unjust discrimination against interstate commerce; and that by reason of the application of said intrastate rates and charges the railroads are being deprived of a large amount of revenue to which they are entitled and which it is necessary for them to have in order to furnish adequate and efficient transportation service and that such loss in revenue results in an undue burden upon and a discrimination against interstate commerce and undue preference of intrastate commerce, in violation of the Interstate Commerce Act, as amended, and particularly Sections 13 and 15a thereof; Title 28, United States Code, Sections 13 and 15a. The prayer of said Petition is that the Interstate Commerce Commission institute an investigation and remove the alleged violations and prescribe rates and charges for the transportation of freight moving in intrastate commerce within the State of Florida which shall carry increases in the same measure and to the same degree as authorized by said Commission in its Dockets Ex Parte 162 and 166.

A certified copy of said Petition is a part of the Record accompanying this complaint.

[fol. 8] 16. On January 5, 1949 the Interstate Commerce Commission entered its Order of Investigation and thereby ordered an investigation as requested in its Docket No. 30140. A certified copy of said Order of Investigation is a part of the Record accompanying this complaint.

17. On May 12, 1949 the Interstate Commerce Commission assigned said Docket No. 30140 for hearing on June 14, 1949 but on May 27, 1949 said docket was reassigned for hearing on June 28, 1949.

18. Pursuant to said Order of Investigation and Reassignment of Hearing a hearing was conducted, commencing June 28, 1950. A certified copy of the complete Transcript of Hearing and all exhibits received in evidence at said hearing are a part of the Record accompanying this complaint.

18.1 The railroads requested at said hearing that said Order of Investigation be amended to exclude "road aggregates" from said proceeding and such amendment was allowed. (Tr. 20, 21).

18.2 The Florida East Coast Railway Company requested at said hearing that its rates on fertilizer and fertilizer materials applicable between points on its line be excluded from said proceeding on the ground that a further increase in its rates on fertilizer and fertilizer materials would cause a diversion of that traffic and such request was granted (Tr. 20, 21).

19. Thereafter, on May 4, 1950, the Report of the Interstate Commerce Commission was decided. Said Report is attached hereto as Exhibit A and a certified copy thereof is a part of the Record accompanying this complaint. The primary findings and requirement contained in said Report and decision in I.C.C. Docket No. 30140 (I. & S. No. 5646 is not involved in this action) are:

19.1 That intrastate rates and charges should be established between points in Florida that will reflect the same [fol. 9] increases maintained on like interstate traffic to, from and within Florida under the authorizations of the Interstate Commerce Commission in its Dockets Ex Parte 162 and 166;

19.2 That the transportation conditions incident to the

intrastate transportation of freight in Florida are not more favorable and such conditions in the Florida peninsular are somewhat less favorable than those within Southern Territory and between Florida and interstate points;

19.3 That the present interstate freight rates within Florida and between points in Florida and points in other states are just and reasonable and the intrastate rates and charges approved in said Report will not exceed a just and reasonable level;

19.4 That there is an active competition between localities engaged in interstate commerce between points in Florida and points in other southern states, on the one hand, and localities engaged in intrastate commerce in Florida on the other hand, and this competition extends for all practical purposes throughout the entire State of Florida and to class and commodity traffic generally;

19.5. That the Florida intrastate rates and charges which are below the level authorized by said Report are abnormally low and are not contributing their fair share to the revenue required by the railroads to enable them to render adequate and efficient service and to operate profitably, and thereby accomplish the purpose of the Interstate Commerce Act as set forth in the national transportation policy declared by Congress to develop and preserve a national transportation system adequate to meet the needs of the commerce of the United States, of the postal service and of the national defense; and that the burden thus cast upon interstate commerce is undue to the extent that said intrastate rates and charges are less than they would be on the basis approved in said Report;

19.6 That the establishment of the intrastate rates and charges increased sufficiently to equal the level approved [fol. 10] in said Report will substantially increase the revenue of the railroads therefrom and will constitute not more than a fair proportion of said railroads' total income, not taking into consideration the increases granted by the Interstate Commerce Commission in its Docket Ex Parte 168; (I.C.C. Docket Ex Parte 168 is not involved in this action.)

19.7 That the maintenance of intrastate rates and charges within Florida on bases lower than those approved in said Report causes unjust discrimination against interstate com-

merce in all instances, undue preference of and advantage to localities in intrastate commerce and undue prejudice to localities in interstate commerce in nearly all instances, and undue and unreasonable advantage and preference to intrastate shippers of cement;

19.8 That such unjust discrimination and undue prejudice should be removed by establishing intrastate rates and charges approved in said Report as aforesaid;

19.9 That unless the Florida Commission notified the Interstate Commerce Commission within 30 days from the date of service of said Report that the Florida Commission would permit promptly the increases approved in said Report, the Interstate Commerce Commission would enter an order carrying into effect said findings.

20. Under date of June 19, 1950 the Florida Commission filed with the Interstate Commerce Commission its Petition for Rehearing. A certified copy of said Petition is a part of the Record accompanying this complaint.

21. At a General Session on July 25, 1950 the Interstate Commerce Commission entered its Order denying said Petition for Rehearing. A certified copy of said Order is a part of the Record accompanying this complaint.

22. The Interstate Commerce Commission entered its Final Order in its Docket No. 30140 at a General Session on [fol. 11] July 25, 1950 and therein made the aforesaid Report and decision of said Commission, decided May 4, 1950, a part of said Final Order. Said Final Order noted the failure of the Florida Commission to notify the Interstate Commerce Commission that the Florida Commission would permit the increases approved in said Report in accordance with the requirement of said Report as aforesaid, and ordered the railroads (respondents in said proceeding) to cease and desist, on or before September 28, 1950, and thereafter to abstain from practicing the unjust discrimination and the undue preference and advantage found in said Report to exist, and further ordered said railroads to establish, on or before September 28, 1950, upon 30 days notice, and thereafter to maintain and apply for the intrastate transportation of freight from and to points in the State of Florida freight rates and charges no lower than the rates and charges, or on the rate bases, approved in said Report. A copy of said Final Order is attached

hereto as Exhibit B and a certified copy thereof is a part of the Record accompanying this complaint.

Final Order and Report Are Illegal and Invalid

23. Plaintiffs allege that the aforesaid Final Order of the Interstate Commerce Commission and the Report made a part thereof in I. C. C. Docket No. 30140 are illegal and invalid for the following reasons:

23.1. That said Commission acted arbitrarily, unreasonably and unlawfully in authorizing increases in intrastate freight rates and charges as approved in said Final Order and Report, in that the evidence adduced at the hearing in said Docket No. 30140 shows that the railroads were earning a fair and reasonable return from the operation of their intrastate freight service in Florida;

[fol. 12] 23.2 That such evidence reveals that in 1948 the three major railroads operating in Florida and doing approximately ninety per cent of the railroad business in Florida, namely: Atlantic Coast Line Railroad Company, Seaboard Air Line Railroad Company and Florida East Coast Railway Company, earned in excess of forty million dollars from their freight operations alone and that their passenger deficits were twenty million dollars, thus disclosing that fifty cents out of every dollar earned by said railroads was siphoned off to make up for passenger losses; that such evidence shows that any alleged revenue needs of the railroads were not occasioned by the operation of their freight service but were caused by deficits in the operation of their passenger service; therefore said Commission acted arbitrarily, unreasonably and unlawfully in authorizing the increases in intrastate freight rates and charges approved in said Final Order and Report in that said increases will impose on Florida intrastate shippers of goods deficits incurred by the railroads in the operation of their passenger service and will result in placing on said shippers excessive charges in order to supply an adequate return for the entire service of the railroads;

23.3 That said Commission acted contrary to law and arbitrarily and unreasonably in authorizing the increases in intrastate freight rates and charges approved in said

Final Order and Report and thereby changing the intrastate freight rates and charges previously approved by the Florida Commission, in that before invading the state field and changing intrastate rates in the interest of the revenue of the railroads it was necessary that the Interstate Commerce Commission make findings, supported by evidence, as to the revenue which has been derived by the railroads from the traffic in question, the revenue which can be expected under the increased rates, and that the alteration of the intrastate rates will produce, or is likely to produce, income necessary to prevent an undue burden upon the [fol. 13] interstate revenues of the railroads and to maintain an adequate transportation service, and the Interstate Commerce Commission failed to make such findings in said Final Order and Report and cannot make such findings as there is no evidence in the record of said hearing to support such findings.

23.4 That said Commission acted unlawfully and arbitrarily and unreasonably in failing to make findings, supported by evidence, as to what contribution from intrastate traffic would constitute a fair proportion of the railroads' total income, and said Commission cannot make such findings as there is no evidence in the record of said hearing to support such findings.

23.5 That said Commission acted unlawfully and arbitrarily and unreasonably in failing to make findings, supported by evidence, as to what amount of revenue was required to enable the railroads to operate efficiently, and said Commission cannot make such findings as there is no evidence in the record of said hearing to support such findings.

23.6 That said Commission acted unlawfully and arbitrarily and unreasonably in failing to make findings, supported by evidence, that the present intrastate freight rates and charges in Florida are less than compensatory or insufficient to cover the full cost of service, and said Commission cannot make such findings as there is no evidence in the record of said hearing to support such findings.

23.7 That said Commission acted unlawfully and arbitrarily and unreasonably in failing to make findings, supported by evidence, that maintenance of the increased intrastate freight rates and charges approved in said Final

Order and Report is necessary to the operation of a nationally efficient and adequate transportation system, and said Commission cannot make such findings as there is no evidence in the record of said hearing to support such findings.

[fol. 14] 23.8 That the general finding (finding No. 7 of said Report) that the present Florida freight rates and charges cause unjust discrimination against interstate commerce in all instances is unlawful and arbitrary and unreasonable in that the same is contrary to the evidence in the record of said hearing and there is no evidence in said record to support such finding; that said finding as to alleged unjust discrimination is unlawful and arbitrary and unreasonable because said finding cannot be made lawfully unless and until said Commission makes the findings, supported by evidence, described in paragraphs numbered 23.3 to 23.7, inclusive, hereof.

23.9 That the general finding (finding No. 7 in said Report) that the present Florida intrastate freight rates and charges cause undue preference of and advantage to persons and localities in intrastate commerce and undue prejudice to persons and localities in interstate commerce in nearly all instances is contrary to the evidence in the record of said hearing and there is no evidence in said record to support such finding; that said finding fails to identify and name the persons and localities who are the beneficiaries of such alleged preference and advantage or the persons or localities who are the victims of such alleged undue prejudice, and said Commission cannot make a finding identifying and naming such persons and localities as there is no evidence in said record upon which such a finding can be predicated.

23.10 That all of the findings of said Final Order and Report (findings No. 1 to 8, inclusive, of said Report) are contrary to the evidence in the record of said hearing and there is no evidence in said record to support such findings, or any of them.

23.11 That the conclusion that the cost of train operations [fol. 15] was higher on intrastate than on interstate traffic in Florida (sheet 33 of said Report) is contrary to, and is not supported by the evidence in the record of said hearing and, therefore, is unlawful and arbitrary and unreasonable;

that the evidence on which said conclusion is supposedly founded consists principally of an analysis made by the railroads which is shown by the evidence to be unreliable in that said analysis covers a period of one week only, which is not shown to be representative and covers only five trains, which are not shown to be typical (Tr. 26), and in that the correctness of said analysis depends primarily upon the classification of freight cars between intrastate and interstate movement, and such classification is based entirely on conductors' wheel reports in which all cars are classified as intrastate if their movement was wholly within Florida, as such conductors' reports consider only the origin and destination of the car itself without regard to the lading (Tr. 47); that in their testimony the witnesses of the railroads classified as intrastate cars all empty refrigerator cars moving south from Jacksonville, Florida in the face of the fact that there is no intrastate movement of loaded refrigerator cars in Florida (Tr. 36) and the further fact that in fixing rates on fresh fruits and vegetables moving in interstate commerce the Interstate Commerce Commission has always taken into consideration the return movement of empty cars and compensated for such return movement at the interstate rate; that said witnesses also classified as intrastate cars all cars moving from the phosphate mines to Tampa, Florida for transshipment by water despite the fact that such train movement of phosphate is under interstate lading and interstate rates (Tr. 712).

23.12 The action of said Commission in finding (finding No. 1 of said Report) that transportation conditions in the [fol. 16] intrastate transportation of freight in Florida are not more favorable and that such conditions are somewhat less favorable than those within Southern Territory and between Florida and interstate points is unlawful and arbitrary and unreasonable in that the railroads failed to carry the burden upon them to make a definite showing as to the relative transportation conditions affecting intrastate as well as interstate commerce, and such finding is not supported by the evidence.

23.13 The action of said Commission was arbitrary and unreasonable and contrary to law in failing to take into consideration that further increases in intrastate freight

rates and charges will divert traffic from the railroads and in some instances will result in a decrease rather than an increase in the revenue of the railroads.

23.14 Said Commission acted without authority of law and aribitrarily and unreasonably in authorizing the increases in intrastate freight rates and charges approved in said Final Order and Report in that such increases are not warranted as it is apparent from a consideration of the record in said hearing that said Commission approved such increases upon the mere existence of a disparity between the intrastate rates and charges as approved by the Florida Commission and the interstate rates and charges as previously approved by the Interstate Commerce Commission in its Dockets Ex Parte 162 and 166 as aforesaid.

23.15 The entry of said Final Order and Report is not warranted by the record in said hearing, and is contrary to law, and constitutes an illegal invasion of the powers reserved to the State of Florida and to the people of the State of Florida in violation of the Tenth Amendment of the Constitution of the United States.

[fol. 17] Irreparable Injury

24. Plaintiffs allege that by virtue of the jurisdiction and power vested in the Florida Railroad and Public Utilities Commission and the mandatory duty imposed on said Commission by the sovereign State of Florida acting through the Legislature of the State of Florida, to make reasonable and just rates of freight tariffs to be observed by all railroads, railroad companies and common carriers doing business in Florida over their respective lines, said Commission entered orders prescribing reasonable and just rates and charges on the intrastate transportation of freight in Florida as aforesaid; that in the event the increased freight rates and charges by the Interstate Commerce Commission in said Final Order and Report are permitted to become effective and the operation and enforcement of said Final Order are not restrained and enjoined, plaintiff will be divested of their statutory jurisdiction and power to make reasonable and just rates and charges on the intrastate transportation of freight in Florida and will be precluded from exercising their statutory right and obligation to make

such rates and charges, and thereby plaintiffs, the State of Florida and the people and citizens of Florida will suffer immediate and irreparable injury and loss.

24.1 Plaintiffs allege that by the aforesaid Final Order and Report the Interstate Commerce Commission has approved intrastate rates and charges which will increase the rates and charges on intrastate freight in Florida by an estimated $915,325.00 per annum, (sheet 7 of said Report); that under said Final Order the railroads are ordered and required to establish, on or before September 28, 1950, upon 30 days notice, and thereafter to maintain and apply to the intrastate transportation of freight in Florida the increases approved in said Final Order and Report; that on August [fol. 18] 23, 1950, in keeping with said requirement of said Final Order, the Atlanta & Saint Andrews Bay Railway Company issued Supplement 6 to its Florida Local Tariff No. 11 and on the same date established and gave notice of increases in intrastate freight rates and charges in Florida on the items embraced in said tariff and such increases will become effective on September 28, 1950 and thereafter the intrastate shippers of said items on the lines of said railroad in Florida will be subject to such increases in freight rates and charges, and such increases will be imposed on the people and citizens of Florida, unless restrained by order of this Court before September 28, 1950; that subsequent to August 23, 1950 all of the railroads operating in Florida subject to the provisions of said Final Order in accordance with the aforesaid requirement of said Final Order, have issued supplements to numerous and various existing tariffs of said railroads on their intrastate traffic in Florida and established and given notice of increases in intrastate freight rates and charges in Florida on the items covered by such tariffs and such increases will become effective on September 28, 1950 and thereafter the intrastate shippers of said items on the lines of said railroads in Florida will be subject to such increases in freight rates and charges, and such increases will be imposed on the people and citizens of Florida, unless restrained by order of this Court before September 28, 1950; that pursuant to the aforesaid requirement of said Final Order said railroads will continue to establish and give notice of increases in intrastate freight rates and charges on numer-

ous and various items in addition to those items covered by the aforesaid tariffs and said increases will become effective as provided by said Final Order and thereafter the intrastate shippers of such freight on the lines of said railroads in Florida will be subject to such increases in freight rates and charges, and such increases will be im-
[fol. 19] posed on the people and citizens of Florida, unless restrained by order of this Court before the same become effective; that if the intrastate freight rates and charges prescribed and ordered by the Florida Commission as aforesaid are increased under said Final Order of the Interstate Commerce Commission and said Final Order should hereafter be set aside and annuled, restitution to each shipper for each shipment made under such increases would be practically impossible and the people and citizens of Florida upon whom such increases ultimately will be imposed in consequence of such shipments will have no remedy or right of action to seek recovery of the sums exacted from them by reason of such increases; that said shippers and the people and citizens of Florida could not be adequately compensated for or redressed by any action or actions and if such increases are permitted to become effective said shippers and the people and citizens of Florida will suffer irreparable injury and loss.

24.2 Plaintiffs allege that by virtue of the jurisdiction and power vested in them and the duty imposed on them as aforesaid, and in the interest of and as representatives of the State of Florida and the people and citizens of Florida, they instituted this suit for the purpose, among others, of protecting and upholding such jurisdiction, power and duty as aforesaid and that immediate and irreparable injury and loss to plaintiffs, the State of Florida, the people and citizens of Florida and the shippers of intrastate freight in Florida will result from the establishment and maintenance of the increases in intrastate freight rates and charges approved in said Final Order of the Interstate Commerce Commission unless plaintiffs are granted an order temporarily restraining the operation and enforcement of said Final Order, and that such injury and loss will result before notice can be served on defendant and a hearing had on the application for a temporary restraining order.

[fol. 20] 24.3 Plaintiffs, said shippers and the people and citizens of Florida have no plain, adequate and complete remedy at law available to them in the premises, and plaintiffs aver that by reason thereof and the matters hereinbefore alleged it is necessary for the protection of the rights of plaintiffs, the shippers of intrastate freight in Florida and the people and citizens of Florida that pending the determination of this action plaintiffs be granted a temporary restraining order, without notice, and a temporary injunction, as hereinafter prayed for, restraining and enjoining the operation and enforcement of the aforesaid Final Order of the Interstate Commerce Commission.

Wherefore, Plaintiffs Pray:

1. That this action be heard by a three-judge court as provided and required by Title 28, United States Code, Section 2284;

2. That defendant, its officers, employees, agents and its agency, the Interstate Commerce Commission, including the commissioners of said Commission, be temporarily restrained from enforcing the aforesaid Final Order of the Interstate Commerce Commission dated July 25, 1950, and that the operation of said Final Order be temporarily restrained, until the hearing and determination of the application for a temporary injunction as hereinafter prayed for;

3. That, after hearing, defendant, its officers, employees, agents and its agency, the Interstate Commerce Commission, including the commissioners of said Commission, be temporarily enjoined from enforcing said Final Order dated July 25, 1950 and that the operation of said Final Order be temporarily enjoined, pending final hearing and a determination of this action;

[fols. 21-22] 4. That upon final hearing the Court will enter an order and decree setting aside and annuling said Final Order dated July 25, 1950 and permanently enjoining defendant, its officers, employees, agents and its agency, the Interstate Commerce Commission, including the commissioners of said Commission, from enforcing said Final Order and permanently enjoining the operation of said Final Order;

5. Such other and further relief as is equitable and just.

(S.) Lewis W. Petteway, Guyte P. McCord, Jr., D. Fred McMullen, 700 South Adams Street, Tallahassee, Florida, Counsel for Plaintiffs.

Duly sworn to by Fred Pettijohn. Jurat omitted in printing.

[fol. 23] IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER OF THE UNITED STATES OF AMERICA—Filed November 20, 1950

Now comes the United States of America, defendant, and for answer to the complaint filed herein, admits, denies, and avers as follows:

1. Admits the allegations of fact in paragraphs 1 through 8 and alleges that the documents referred to in paragraphs 7 and 8 do not constitute the entire record, nor all of the material record which was before and considered by the Commission. Avers that the entire material record is contained in Docket No. 30140, Volumes 1, A 2, 3, 4 and 5 and that attack on the action of the Commission based on substantiality of evidence to support findings requires submission to and consideration by the court of all of the record upon which the Commission's action is based; and that all of said record has not been filed by plaintiffs herein as is incumbent on them. Further answering, respectfully refers the court to the entire record before the Commission for a complete and accurate account of the proceedings there had.

[fol. 24] 2. Admits the allegations of fact in paragraphs 9 and 10, but respectfully refers the court to that part of the official record before the Interstate Commerce Commission there referred to for a complete and accurate statement of their contents:

3. Admits the allegations of fact, but none of the inferences or conclusions, in paragraphs 11 through 15. Further answering, alleges that in accordance with the final order of the Interstate Commerce Commission of July 15, 1950, the

carriers filed tariffs effective September 28, 1950, but that the increases in intra-state rates and charges therein with respect to wastewoods and sugar cane moving to the mills have been deferred by Interstate Commerce Commission orders dated September 27, 1950, and October 12, 1950, in a proceeding entitled "Investigation and Suspension Docket No. 5850, Sugar Cane — Wastewood in Florida (Intrastate)", until the further consideration and decision of the Commission.

4. Answering paragraphs 16 through 22, respectfully refers the court to the record of the proceedings before the Interstate Commerce Commission for a complete and accurate statement of their contents, and denies all facts, inferences or conclusions of fact inconsistent with or contrary to those in said record before the Commission or found by it.

5. Denies that the final order of the Commission and its report are illegal or invalid for the reasons or any of them referred to or alleged in paragraph 23, or for any other reason; denies that plaintiffs, or any other persons, have or will suffer any irreparable or any legal injury, as alleged or referred to in paragraph 24, by reason of the action of the Commission challenged herein. Avers that protection against any loss, damage or injury, pending final decision in this suit concerning the validity of the Commission's action challenged herein has been obtained through stipulation of the parties filed herein and approved by the district judge on September 26, 1950, and that no restraining order or interlocutory injunction has ever been or is now appropriate. [fols. 25-26] 6. Further answering, denies all allegations or parts of allegations not specifically answered herein, and avers that the proceedings before the Commission were conducted in all respects in accordance with law, that the Commission has not exceeded its statutory power, that the findings made are adequate, that substantial evidence of record supports the findings, and that the report and order made by the Commission are not invalid for the reasons alleged in the complaint, or for any other reason, but are in all respects valid

Wherefore, having fully answered, the United States of America prays that the relief prayed for in the complaint

be denied and the complaint be dismissed with costs to the plaintiffs, and that it have such other and further orders and decrees as may be just and proper.

John F. Baecher, Special Assistant to the Attorney General, Department of Justice, Washington, D. C.; Wm. Amory Underhill, Acting Assistant Attorney General; James E. Kilday, Special Assistant to the Attorney General; George Earl Hoffman, United States Attorney, Attorneys for The United States of America, Defendant.

CERTIFICATE OF SERVICE (omitted in printing)

[fol. 27] IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER OF THE INTERSTATE COMMERCE COMMISSION—Filed October 20, 1950

The Interstate Commerce Commission, hereinafter called the Commission, one of the defendants in the above-entitled action, now and at all times hereafter saving and reserving to itself all and all manner of benefit and advantage of exception to the many errors and insufficiencies in the plaintiffs' complaint contained, for answer thereunto or unto so much or such parts thereof as it is advised that it is material for it to answer, answers and says:

I

Answering the allegations of paragraphs 1 to 7, inclusive, of the complaint, in so far as answer is deemed material, the Commission admits that this Court has jurisdiction of the action and venue of the parties thereto, that the Florida Railroad and Public Utilities Commission is the agency of the State of Florida empowered by that State to determine the reasonableness of intrastate rail rates, and that the [fol. 28] Interstate Commerce Commission is an agency of the United States charged with the responsibility of administering the provisions of the Interstate Commerce Act,

49 U. S. C., notes preceding and Sections 1, 301, and 901, et seq.

II

Answering paragraph 8 of the complaint, the Commission admits that the official documents described in said paragraph constitute a part of the Commission record, but does not constitute the entire record before and considered by the Commission, which is contained in Docket No. 30140, Volumes 1, 1A, 2, 3, 4 and 5, and the Commission denies that the parts of the record referred to in said paragraph of the complaint is all of said record that is material to the determination of issues presented in this action, and that such parts constitute or may legally be considered as the entire record involved in this action.

III

The Commission admits the allegations of paragraph 9 of the complaint, and alleges that under the order entered December 5, 1946, in the proceeding Ex Parte No. 162, basic freight rates and charges of the petitioning rail carriers, practically all of them, were increased by twenty per cent with certain exceptions in the report in 266 I.C.C. 537.

IV

The Commission admits the allegations of paragraph 10 of the complaint, with the qualification that basic freight rates and charges of rail carriers were increased by the order entered July 27, 1948, in the proceeding Ex Parte No. 166 by percentages differing for described territories, that here concerned, within the southern territory and interterritorially between southern and eastern territory, by twenty-five per cent.

[fol. 29]

V

Answering the allegations of paragraphs 11, 12, 12.1, 12.2, 13, 13.1, 13.2, 14 and 15 of the complaint, the Commission admits that the proceedings, findings, and decisions of the Florida Commission were as stated therein, which findings and decisions in effect approved increases in the intrastate rates and charges equal in percentages to those

approved by the Interstate Commerce Commission, for increases in interstate rates and charges under the Ex Parte 162 and 166 proceedings, with the exceptions stated in the complaint paragraphs 12.1 and 13.1, and that included in such exceptions the Florida Commission authorized and permitted no increases on (c) wastewoods, such as stumps, knots and limbs, and (d) sugar cane moving to the mills. The Commission further alleges that the order of July 25, 1950, required the rail carriers concerned to establish and maintain, on or before September 28, 1950, rates and charges on Florida intrastate freight transportation no lower than the rates and charges approved in the report of May 4, 1950, in accordance with which said carriers filed their tariffs, effective September 28, 1950, increasing said intrastate rates and charges, and of which the schedules relating to the commodities above described in (c) and (d) have been suspended, by order entered September 27, 1950, with corrected order dated October 12, 1950, in the proceeding entitled "Investigation and Suspension Docket No. 5850, Sugar Cane—Wastewood in Florida (Intrastate), which in effect suspends and removes the requirement under the order of July 25, 1950, that the rail carriers increase the intrastate rates on these commodities until the further consideration and decision of the Commission in the I. & S. No. 5850 proceeding.

VI

Answering allegations of paragraphs 24, 24.1, 24.2 and 24.3, the Commission denies that the State of Florida, [fol. 30] interstate shippers in said State, or anyone affected by the Commission orders entered in the proceeding No. 30140, and more particularly the order entered on July 25, 1950, Exhibit B to the Complaint, will suffer any damage or injury by reason of said orders, and alleges that any such damage or injury resulting or occasioned by said orders, which is not admitted, will be caused by application and operation of laws of the United States, particularly by reasons of the provisions of Section 13 of the Interstate Commerce Act, 49 U.S.C. 13, and that protection against any such loss, damage or injury, pending final decision of this action, without a restraining order

or interlocutory injunction by this Court, has been provided for under the stipulation of parties filed, and the order of the District Court Judge entered herein on September 26, 1950.

VII

Answering the further allegations of the complaint herein, the Commission alleges that the proceeding here involved was instituted upon the filing of a petition by the Atlanta & St. Andrews Bay Railway Company, Atlantic Coast Line Railroad Company, Florida East Coast Railroad Company (Scott M. Loftin and John W. Martin, trustees), Georgia & Florida Railroad (W. V. Griffin and H. W. Purvis, trustees), Georgia Southern and Florida Railway Company, Louisville and Nashville Railroad Company, St. Louis-San Francisco Railway Company, and Seaboard Air Line Railroad Company, filed December 3, 1948, seeking to have the general increases in basic interstate rates and charges, as ordered in Ex Parte No. 162 and 166 applied as increases to the basic intrastrate rail carrier rates and charges in the State of Florida, with certain exceptions as stated in the Commission report of May 4, 1950, under the provisions of Section 13 of the Interstate Commerce Act, 49 U.S.C. 13; that a hearing upon said [fol. 31] petition was ordered and was held at Daytona Beach, Florida, on June 28, 1949, with a proposed Examiner's report served January 18, 1950, to which numerous exceptions were filed by various parties including plaintiff, Florida Commission, and many of the shippers intervening herein; that numerous briefs were filed after service of the Examiner's proposed report, including that of plaintiff Florida Commission and a number of shippers intervening herein, and oral argument of counsel for petitioning carriers, the State of Florida, and for several shippers, was heard by the Commission on April 11, 1950, and the Commission report here involved was entered on May 4, 1950, wherein it was found that (1) transportation conditions in Florida are less favorable than in southern territory and between Florida and interstate points, (2) that interstate rates and charges within and between Florida and points in other states, including those found just and reasonable under Investigation and Suspension

No. 5646, to extent decided in said reports, are just and reasonable, and the intrastate rates and charges approved in said report will not exceed a just and reasonable level, (3) that there is active competition between localities in Florida and points in other states in respect to intrastate and interstate, practically extending throughout Florida and to class and commodity traffic generally, not including however sugar cane to mills, molasses, and for short hauls fertilizer and a few other commodities, (4) that Florida intrastate rates and charges below the level authorized in the report, are abnormally low, do not contribute a fair share of revenues required by the carriers to render adequate and efficient service and to operate profitably as contemplated by the Interstate Commerce Act, resulting in a burden upon interstate commerce to the extent that the intrastate rates and charges are less than they would be as approved in said report, (5) that maintenance of [fol. 32] lower Florida rates and charges than approved by said report would cause in future an unjust discrimination against interstate commerce, undue preference and advantage to localities in intrastate commerce, and undue prejudice to localities in interstate commerce, undue preference and advantage to shippers of cement, particularly those at Tampa, and undue prejudice to interstate shippers, especially those at Clinchfield, Ga., and (6) that the unjust discrimination and undue prejudice should be removed by establishing intrastate rates and charges between points in Florida, which will reflect the same increases as are, and for the future may be, maintained on like interstate traffic to and from Florida and within Florida under the authorizations in the Commission Ex Parte 162 and 166 proceedings, modified as indicated in said report and as proposed before the Florida Commission in proceedings above referred to, and with the provisions as to sugar cane, wastewood, pulpwood, and fertilizer and fertilizer materials, as stated in the findings and conclusions of said report; that the report stated an order would be issued, carrying the report findings into effect, unless notified by the Florida Commission within 30 days after service of the report; that it would promptly permit the increases approved in the said report; that following service of this report various parties in interest filed petitions for recon-

sideration, including plaintiff Florida Commission and a number of the shippers intervening herein, to which the rail carriers replied, and the Commission denied the petitions for reconsideration by order entered July 25, 1950, and, the Florida Commission not having notified the Interstate Commerce Commission that the increases approved in said report would be permitted as to the intrastate rates and charges, an order was entered July 25, 1950, requiring the rail carriers to establish on or before September 28, 1950, in the manner prescribed, the increased rates and charges as to intrastate traffic as approved in said report [fol. 33] of May 4, 1950; and that the complaint herein was filed on September 18, 1950.

VIII

The Commission further alleges that all the parties to said proceeding were given a full and complete hearing; that the findings and conclusions in said report, entered May 4, 1950, and order entered July 25, 1950, were and are fully supported and justified by the evidence submitted in said proceeding as aforesaid, and that in making said report it considered and weighed carefully, in the light of its own knowledge and experience, each fact, circumstance and condition called to its attention on behalf of the parties to said proceedings by their respective counsel.

The Commission further alleges that said report and order were not made or entered either arbitrarily or unjustly, or without proof or contrary to the relevant evidence, or without evidence to support them; that in making said report and order the Commission did not exceed the authority conferred upon it by law, and the Commission denies each of and all the allegations to the contrary contained in the complaint.

IX

Except as herein expressly admitted, the Commission denies the truth of each of and all the allegations contained in the complaint, insofar as they conflict either with the allegations herein, or with either the statements or conclusions of fact included in said report and order.

All of which matters and things the Commission is ready

to aver, maintain, and prove as this Honorable Court shall [fol. 34] direct, and hereby prays that said complaint be dismissed.

Interstate Commerce Commission, by (S.) Allen Crenshaw, Assistant Chief Counsel.

(S.) Daniel W. Knowlton, Chief Counsel, Of Counsel.

[fol. 35] In United States District Court

[Title omitted]

Answer of Atlantic Coast Line Railroad Company and Other Railroads Operating in Florida, Intervening Defendants—Filed October 23, 1950

Come now Atlantic Coast Line Railroad Company and other railroads operating in Florida, who are intervening defendants herein, and for answer to the complaint herein filed by the Florida Railroad and Public Utilities Commission say:

These intervening defendants, jointly and severally, hereby adopt the answer herein filed on behalf of the Interstate Commerce Commission as their answer and in the same manner and to the same extent as though each paragraph thereof were herein fully set out.

[fol. 36] Wherefore, having answered, these intervening defendants pray that the complaint herein be dismissed.

(S.) James A. Bistline, Southern Railway Building, 15th & K Streets, N. W., Washington 13, D. C.; (S.) W. A. Northcutt, c/o Louisville & Nashville Railroad Company, Louisville 1, Ky.; (S.) Frank W. Gwathmey, 1110 Shoreham Building, Washington 5, D. C., Attorneys for Intervening Railroad Defendants.

[fol. 37] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER DESIGNATING JUDGES TO CONSTITUTE THE THREE-JUDGE COURT—Filed September 21, 1950

The Honorable Dozier A. DeVane, United States District Judge for the Northern District of Florida to whom an application for injunction and other relief has been presented in the above styled and numbered cause, having notified me that the action is one required by act of Congress to be heard and determined by a district court of three judges, I hereby designate the Honorable Leon McCord, United States Circuit Judge, and the Honorable George W. Whitehurst, United States District Judge for Northern and Southern Districts of Florida, to serve with Judge DeVane as members of, and with him to constitute, the said court to hear and determine the action.

Witness my hand this 19th day of September, 1950.

(S.) Joseph C. Hutchenson, Jr., Chief Judge, Fifth Circuit.

(Injunctions—Three-Judge Courts—Designation, 28 U. S. C. A., sec 2284.)

[fol. 38] IN UNITED STATES DISTRICT COURT

Transcript of Final Hearing, May 1, 1951—Filed September 24, 1951

Before: Honorable Leon McCord, Circuit Judge; Honorable Dozier A. DeVane and Honorable George W. Whitehurst, District Judges.

APPEARANCES:

Lewis W. Petteway, D. Fred McCullen, Guyte P. McCord, Jr., Attorneys for Plaintiff;

F. C. Hillyer, M. W. Wells, Frank W. Gwathmey, James A. Bistline, Attorneys for Intervenors;

[fol. 39] John F. Baecher, George Earl Hoffman, Allen Crenshaw, Attorneys for Defendant.

Hattie Bell Love, Official Court Reporter for the Northern District of Florida.

Gentlemen, this is Judge McCord, we have only one case this morning. I will give you one hour to the side, I think that is long enough, and you divide the time up among you as you see fit. We are going to listen, that is what we are going to do, we are seeking the right of it and I feel that way about it, so we will listen to the argument.

Mr. Petteway: May it please the Court, before we get into the argument I would like to proffer on behalf of plaintiffs the record which was made before the Interstate Commerce Commission.

Judge McCord, will you repeat that, I didn't understand you?

Mr. Petteway: On behalf of plaintiffs I would like to offer in evidence in this case the record which was made before the Interstate Commerce Commission.

Judge McCord: There is no objection I conclude?

Attorneys: No objection.

Judge McCord: Let it be received in evidence. Does that complete the record?

[fols. 40-43] Mr. Petteway: That completes the record, Your Honors, and is the record that was made before the Interstate Commerce Commission.

Reporter's Certificate (omitted in printing)

[fol. 44] Before the Interstate Commerce Commission

Docket No. 30140

In the Matter of Increases in Intrastate Rates and Charges Within the State of Florida

Petition on Behalf of Railroads Operating in the State of Florida—December 3, 1948

To the Interstate Commerce Commission:

Your petitioners, common carriers by railroad within the State of Florida listed in Appendix 1 hereto, present this

petition and respectfully represent and show unto the Commission as follows:

I

Petitioners are corporations organized and existing under the laws of the respective states in which they were incorporated, or trustees of the properties of such corporations. Each of the petitioners operates lines of railroad within the State of Florida and each is engaged in the transportation of freight in interstate commerce to, from, and between points in the State of Florida, and is likewise engaged in the transportation of freight in intrastate commerce within [fol. 45] the State of Florida. Each of petitioners is subject to the provisions of the Interstate Commerce Act, as amended.

II

Petitioners show that by a petition filed with the Commission on April 15, 1946, they and substantially all other Class I railroads in the United States sought authority to make certain increases in their rates and charges, averring that substantial increases in operating expenses, a decline in the volume of traffic handled, and an even greater decline in their net revenues had brought about a critical situation imperiling their ability to continue to render the adequate and efficient transportation service required by the public interest.

In their petition, docketed as Ex Parte 162, *Increased Railway Rates, Fares and Charges, 1946*, it was stated that the increased operating expenses therein referred to were being, and would continue to be, incurred by the petitioning railroads in the transportation of intrastate as well as interstate traffic, and that petitioners' estimate of the revenue they would derive from the proposed increased rates and charges reflected the application of said rates and charges to both interstate and intrastate traffic (Petition, pp. 14-16).

On April 26, 1946, the Commission issued its order reopening Ex Parte 148, *Increased Railway Rates, Fares and Charges, 1942*, and assigned that proceeding for hearing [fol. 46] with Ex Parte 162, the issue at said hearing being limited solely to the question of what increases should be

allowed as an emergency and temporary measure pending a full hearing in Ex Parte 162. By its report and order of June 20, 1946 (264 I. C. C. 695), the Commission authorized the railroads to make certain emergency and temporary increases in their rates and charges, as fully set out in its report and order. The increases authorized therein were made effective on interstate traffic on July 1, 1946.

After extensive further hearings held in various parts of the country and full argument, the Commission, on December 5, 1946, issued its final report and order in Ex Parte 162 (266 I. C. C. 537). It authorized an increase of 20 per cent in "all basic freight rates and charges of petitioning rail and water carriers," except as otherwise specifically provided. The exceptions are set forth in the findings and in Appendix 1 to the report. The increases authorized were made effective on interstate traffic on January 1, 1947, superseded the emergency and temporary increases previously granted, and are now in effect.

III

Petitioners further show that by petition dated May 2, 1946, they petitioned the Florida Railroad and Public Utilities Commission * to grant them the same increases on [fol. 47] Florida intrastate traffic as they had sought with respect to interstate traffic in their petition to this Commission dated April 15, 1946. A copy of the latter petition was attached to the petition of May 2, 1946. The Florida Commission was also furnished with a copy of the transcript of testimony and argument before this Commission in all the Ex Parte 162 proceedings, and with all the exhibits filed in said proceedings.

The petition of April 15, 1946, to this Commission suggested that "the cooperation of the state commissions be invited, as provided by law" (p. 16). A cooperating committee of State Commissioners sat with this Commission throughout the entire Ex Parte 162 proceedings, a majority of whom "agreed in general with the results reached in the

* Prior to July 1, 1947, the Florida Railroad and Public Utilities Commission was the Florida Railroad Commission.

report and findings of the Commission" (264 I. C. C. 699; 266 I. C. C. 543-544).

The petition of April 15, 1946, the reports of this Commission; and the steps taken by petitioners to keep the Florida Commission and all other state commissions fully advised of the proceedings, make it plain that the increases authorized in Ex Parte 162 were sought and intended for application on both interstate and intrastate traffic.

IV

On June 22, 1946, which was just after this Commission's report and order authorizing the emergency and temporary increases heretofore mentioned, petitioners wrote the Florida Commission, called attention to their petition of May 2, 1946 and to this Commission's decision [fol. 48] (a copy of which was enclosed with their letter), and requested the Florida Commission to grant the same emergency and temporary increases on Florida intrastate traffic that this Commission had granted on interstate traffic. This request was granted without a hearing and petitioners were permitted to make the increases effective July 1, 1946, the same day they became effective on interstate traffic.

On December 7, 1946, which was immediately after this Commission's final report and order in Ex Parte 162, petitioners again wrote the Florida Commission, again called attention to their petition of May 2, 1946, enclosed a copy of this Commission's final report and order dated December 5, 1946, and requested the Florida Commission to authorize the same increases on intrastate traffic within that State that this Commission had authorized on interstate traffic. The petition was assigned for hearing on February 4, 1947, and a hearing was held on that date.

By order dated March 11, 1947, the Florida Commission authorized the same increases on Florida intrastate traffic that this Commission had authorized on interstate traffic, with the following exceptions:

"(2) That no increase shall apply on the following traffic:

"(a) Logs moving to the mills.

"(b) Wet phosphate rock moving from the washer to the drying plant.

"(c) Waste woods such as stumps, knots and limbs [fol. 49] moving to the retorts or recovery plants.

"(d) Sugar cane moving to the mills.

"(3) On pulpwood an increase of 9 per cent on the Ex Parte 123 rates shall apply." *

Petitioners were authorized to make the increases granted effective May 16, 1947, except that by supplemental order dated March 12, 1947, the effective date of the increases granted on road aggregates was postponed to June 16, 1947. A copy of the Florida Commission's order of March 11, 1947, and its supplemental order of March 12, 1947, is attached hereto as Appendix 2.

V

On April 1, 1947, petitioners petitioned the Florida Commission to reopen and reconsider the proceeding mentioned in Paragraph IV hereof, in so far as concerns the exceptions made by its orders of March 11 and March 12, 1947, and to "authorize the full amount of the increases sought by petitioners in respect to said excepted commodities" (p. 13). The Florida Commission set this petition for hearing on April 22, 1947, but the hearing was indefinitely postponed and the petition was denied without a hearing on October 21, 1947. On November 24, 1947, petitioners filed a second petition with the Florida Commission in which they prayed:

[fol. 50] "* * * that the order entered herein, dated October 21, 1947, be vacated and set aside; that their petition of April 1, 1947, be assigned for hearing at the earliest practicable date; and that upon such hearing they be authorized to make increases in rates on the excepted commodities above referred to which shall correspond in all respects with the increases author-

* By order dated May 9, 1947, the Florida Commission permitted an increase of 20 per cent in the rates on pulpwood between points on the Atlanta and St. Andrews Bay Railway.

ized by the Interstate Commerce Commission in its aforesaid report and order in Ex Parte No. 162 for interstate application on said commodities."

The petition of November 24, 1947, was assigned for hearing on January 27, 1948, and a hearing was held on that date. However, no order was issued as the result of this hearing and the petition was reassigned for hearing on June 23, 1948, along with the hearing on petitioners' second supplemental petition for the Ex Parte 166 increases.

VI

Petitioners further show that by a petition dated June 3, 1947, as amended, and by supplemental petitions dated September 5, 1947, and December 3, 1947, they and substantially all other Class I railroads in the United States sought authority from this Commission to make additional increases in their freight rates and charges. The need for additional increases in freight rates and charges was caused by continued increases in employees' wages and in the cost of materials and supplies, and by petitioners' inability to earn sufficient revenue to enable them to continue to provide the [fol. 51] public with adequate and efficient transportation service to meet the needs of commerce, the postal service, and the national defense, as contemplated by Section 15(a) of the Interstate Commerce Act and the National Transportation Policy.

The above-mentioned petitions were docketed as Ex Parte 166, *Increased Freight Rates, 1947*. The original petition of June 3, 1947, of which the amended petitions were parts, contained the following averments and suggestions:

"The increased operating costs hereinbefore mentioned are being and will continue to be incurred in the handling of intrastate, as well as interstate, traffic; and the estimates of increased revenues which Petitioners will receive, as set forth herein, reflect the application of the proposed increases in rates and charges to both interstate and intrastate traffic. It is respectfully suggested, therefore, that the cooperation of the State Commissions be invited, as provided by law, in any

investigation instituted and conducted by the Commission as hereinafter prayed."

VII

After extensive hearings this Commission issued four reports and orders which, in so far as they relate to the rates within southern territory, may be summarized as follows:

Report and order dated October 6, 1947, 269 I. C. C. 33, authorized an interim increase of 10 per cent, with certain exceptions. These increases were made effective October 13, 1947, on interstate traffic.

[fol. 52] Report and order dated December 29, 1947, 270 I. C. C. 81, authorized an interim increase of 20 per cent, with certain exceptions, in interstate freight rates and charges, superseding and including the increases authorized in the order dated October 6, 1947. These increases were made effective January 5, 1948, on interstate traffic.

Report and order dated April 13, 1948, 270 I. C. C. 93, authorized an interim increase of 25 per cent, with certain exceptions, in interstate freight rates and charges, superseding and including the increases authorized in the order dated December 29, 1947. These increases were made effective May 6, 1948, on interstate traffic.

Report and order dated July 27, 1948, 270 I. C. C. 403, superseding the order of April 13, 1948, made permanent the general increases which had been authorized by the order of April 13, 1948, with certain modifications. The increases provided in this order were made effective August 21, 1948, on interstate traffic and are now in effect.

VIII

Petitioners further show that they furnished the Florida Commission with copies of their petition of July 3, 1947, as amended, and also with copies of their supplemental petitions of September 5 and December 3, 1947. They likewise furnished that Commission with copies of the transcript of the testimony and argument before this Com-

mission, and with copies of all exhibits filed in the Ex Parte 166 proceedings.

[fol. 53] A committee of cooperating State Commissioners sat with this Commission during the hearings and argument of Ex Parte 166 and it is stated in the Commission's final report that this committee "authorize us to state that they concur in the foregoing report" (270 I. C. C. 463). The Commission's final report also contains the following statement:

> "Considering the entire record upon this feature of the proceeding, we conclude that the orders heretofore entered, especially when action by the State authorities is finally completed upon the carriers' proposals, meet the emergency needs of the petitioning carriers, as shown by the record, supplemented by examination of the reports and returns which we are privileged to use under the general stipulation."

It is plain that this Commission concluded that the carriers needed substantially the same increases in both their interstate and intrastate rates, and that the increases authorized by this Commission were predicated upon the assumption that the several state commissions would authorize similar increases in intrastate traffic moving within their respective states.

IX

Petitioners further show that on July 25, 1947, they advised the Florida Commission that they would request the same increases on Florida intrastate traffic as this Com- [fol. 54] mission authorized on interstate traffic. Such requests were made following each of the Commission's four decisions in Ex Parte 166, with the following results:

On October 8, 1947, petitioners filed with the Florida Commission a motion for authority to make interim increases in their intrastate rates and charges corresponding with the interstate increases authorized in this Commission's report and order of October 6, 1947. After hearing, this motion was denied on November 10, 1947, upon the ground that "*the petitioning carriers have failed to make any separation of their interstate and intrastate business,*

and there is not sufficient evidence available to this Commission upon which it can make such a separation."

On November 24, 1947, petitioners filed with the Florida Commission a petition requesting it to vacate and set aside its order of November 10, 1947, and to grant the interim increases authorized by this Commission's report and order of October 6, 1947. This petition was assigned for hearing on January 22, 1948. In the meantime, however, this Commission had issued its report and order of December 29, 1947, in Ex Parte 166 authorizing an increase of 20 per cent in lieu of the prior increase of 10 per cent. Consequently, on January 2, 1948, petitioners filed a supplemental petition with the Florida Commission requesting authority to increase their intrastate rates and charges by the amounts authorized in this Commission's report and order of December 29, 1947.

On January 27, 1948, the Florida Commission heard [fol. 55] petitioners' supplemental petition of January 2, 1948, together with their petition of November 24, 1947. By order entered April 9, 1948, that Commission granted the same increases as authorized by this Commission's order of December 29, 1947, with the following exceptions:

> On wastewood, stumps, limbs, branches, etc., moving to Pensacola, Fla., no increase.
>
> On sugar cane from the fields to the mill, no increase.
>
> On fertilizer and fertilizer materials so designated in rate tariffs, no increase.
>
> On road aggregates, which include sand, gravel, limestone, crushed stone and related articles, an increase of 10 per cent, with maximum increase of 30 cents per net ton, in lieu of the sought increase of 20 per cent with maximum increase of 30 cents per net ton.
>
> On class rates and rates made in relation thereto, an increase of 10¼ (ten and one-fourth) per cent in lieu of the sought increase of 20 per cent.

By a subsequent order dated May 12, 1948, the Florida Commission held that it had authorized no increases in the rates on dolomite or ground agricultural limestone.

X

Petitioners further show that on April 23, 1948, which was shortly after this Commission's third report and order in Ex Parte 166, they filed a second supplemental petition with the Florida Commission by which they sought au-
[fol. 56] thority "to make effective at the earliest practicable date increases in freight rates and charges which shall correspond in all respects with the increases authorized by the Interstate Commerce Commission for interstate application in the aforesaid report and order of April 13, 1948, in Ex Parte No. 166, as more fully described in said report (Exhibit A hereto), said increases to be in lieu of increases authorized by this Honorable Commission by its order entered herein on April 9, 1948."

This petition was assigned for hearing on June 23, 1948, together with requests for clarification and interpretation of the Florida Commission's orders of April 9 and May 12, 1948. That Commission also assigned for hearing at the same time petitioner's petition of November 24, 1947, in which they requested that they be granted the full Ex Parte 162 increases on the commodities excepted by the Florida Commission's orders of March 11 and March 12, 1947 (See Paragraphs IV and V, *supra*).

The hearing assigned for June 23, 1948, was held, but before the Florida Commission rendered a decision this Commission issued its final report and order in Ex Parte 166. Consequently, on August 3, 1948, petitioners filed a third supplemental petition with the Florida Commission in which they requested that they be granted the same increases in their Florida intrastate rates and charges that this Commission had granted as to interstate rates and charges in its final report and order in Ex Parte 166. *The petition further stated that petitioners were willing*
[fol. 57] *to submit their request for said increases upon the record already made, and this was done.*

By order dated November 13, 1948, a copy of which is attached hereto as Appendix 3, the Florida Commission:

(a) Refused to authorize petitioners to increase their intrastate rates and charges by the amounts authorized with respect to interstate rates and charges

in this Commission's third and fourth reports and orders in Ex Parte 166.

(b) Refused to modify its order of March 11, 1947, so as to authorize the Ex Parte 162 increases on the commodities excepted from those increases by said order.

(c) Continued in effect only until July 1, 1949, the increases authorized by its order of April 9, 1948.

(d) Continued in effect all the exceptions mentioned in its order of April 9, 1948; that is to say, refused to authorize the Ex Parte 166 increases to be made on the excepted commodities.

(e) Revised the class-rate scales to reflect more nearly the interstate scales as increased under Ex Parte 162 and as increased 20 per cent under Ex Parte 166, but did not fully bring them up to the level of the interstate scales as so increased.

(f) Removed the increase which had been previously authorized by its order of April 9, 1948, on phosphatic sand and clay.

(g) Held that sulphur should be considered a fertilizer or fertilizer material on which no increase was granted by its order of April 9, 1948.

[fol. 58] (h) Required the observance of the maximum "hold downs" (maximum increases) set forth in the carriers' petitions on all commodities for which hold downs were proposed.

(i) Held the record and proceedings open for the further consideration of the Commission and the entry of such further orders as may be appropriate.

XI

Petitioners aver that the interstate freight rates and charges between points in Florida and points in other states as increased under authority of the orders of this Commission in Ex Parte 162 and Ex Parte 166 are not in excess of just and reasonable rates, and that the intrastate rates in Florida, if similarly increased by the amounts authorized in Ex Parte 162 and Ex Parte 166 for interstate application, will not be in excess of just and reasonable maximum rates for intrastate application over the lines of these petitioners within said state; *that there are*

no transportation or other conditions which warrant or justify a level of intrastate rates on petitioners' lines in Florida lower than the level of the interstate rates applicable between points in Florida, on the one hand, and points in other southern states, on the other hand; that the intrastate rates which petitioners are compelled to maintain by reason of the aforementioned orders of the Florida Railroad and Public Utilities Commission are unduly and unreasonably low; and that the maintenance of said rates deprives petitioners of a large amount of revenue, which [fol. 59] *they need immediately, and is contrary to the purposes and provisions of the Interstate Commerce Act, as amended.*

XII

Petitioners aver that the rates and charges which they are required to maintain for intrastate application in Florida, as the result of the refusal of the Florida Railroad and Public Utilities Commission to grant the same increases in their intrastate rates and charges as this Commission granted with respect to the interstate rates and charges to, from and between points in Florida, *cause and will continue to cause undue and unreasonable advantage, preference and prejudice as between persons and localities in intrastate commerce in Florida, on the one hand, and interstate commerce, on the other hand, and undue, unreasonable and unjust discrimination against interstate commerce,* in violation of the Interstate Commerce Act, as amended, particularly Section 13 of said Act.

Petitioners further aver that by reason of the application of the said intrastate rates and charges within the State of Florida they are being deprived, and will continue to be deprived, of a large amount of revenue to which they are rightfully entitled, and which this Commission has held that it is necessary for them to have in order that they may furnish adequate and efficient transportation service, and that this loss in revenue results, and will continue to result, in an undue burden upon and a discrimina- [fol. 60] *tion against interstate commerce and undue preference of intrastate commerce,* in violation of the Interstate Commerce Act, as amended, and particularly Sections 13 and 15(a) thereof.

Wherefore, *your petitioners pray that* this Honorable Commission *institute promptly an investigation with respect to the matters and things herein set forth;* that after due notice has been given to *the State of Florida and the authorities thereof, and after such hearing or hearings as the Commission may direct, an order be entered removing the said violations of law herein complained of and prescribing rates and charges for the transportation of freight moving in intrastate commerce within the State of Florida which shall carry increases in the same measure and to the same degree as authorized by your Commission in its report and order of December 5, 1946,* in Ex Parte 162, *Increased Railway Rates, Fares and Charges, 1946,* 266 I. C. C. 537, and in its report and order of July 27, 1948, in Ex Parte 166, *Increased Freight Rates, 1947,* 270 I. C. C. 403; and that the Commission grant petitioners such other and further relief as may be justified.

Respectfully submitted, W. A. Northcutt, M. G. Roberts, Charles Clark, Frank W. Gwathmey, Chas. P. Reynolds, Attorneys for Petitioners.

Washington, D. C., December 3, 1948.

[fol. 61]

APPENDIX 1

Atlanta & St. Andrews Bay Railway Company
Atlantic Coast Line Railroad Company
Florida East Coast Railway Company (Scott M. Loftin and John W. Martin, Trustees)
Georgia & Florida Railroad (W. V. Griffin and H. W. Purvis, Trustees)
Georgia Southern and Florida Railway Company
Louisville and Nashville Railroad Company
St. Louis-San Francisco Railway Company
Seaboard Air Line Railroad Company

Appendix 2

Before the Railroad Commission of the State of Florida

Order No. 1443

Docket No. 1538

In re: Petition for Authority to Increase Intrastate Rates, Fares and Charges Applicable on Common Carrier Rail Lines Operating Within the State of Florida

Order Granting Petition With Exceptions—March 11, 1947

The Railroad Commission of the State of Florida held a public hearing on the above petition in Tampa, Fla., on Tuesday, February 4, 1947, pursuant to Notice No. 857, dated December 19, 1946.

The following appearances were entered at said hearing: Frank W. Gwathmey on behalf of all railroads operating [fol. 62] in Florida, petitioners herein; R. K. Parsons and J. S. Yeager for Florida East Coast Railway; W. W. Wolford for Seaboard Airline Railway; R. J. Hodgkins for Atlantic Coast Line Railroad; G. L. Barnard for Southern Railway System; M. C. Edwards for Apalachicola and Northern Railroad; William B. Ellard for Atlanta, St. Andrews and Bay Railroad; Thomas E. Grady for Florida Rate Conference and the Greater Miami Traffic Association; W. W. Balkcom for Florida Rate Conference and Tampa Traffic Association; T. C. Maurer for Jacksonville Traffic Bureau, Florida Rate Conference and the National Container Corporation; B. H. Overton for the Florida Rate Conference and St. Petersburg Traffic Bureau; R. J. Healey for the Florida Rate Conference and Broward County Port Authority; B. S. Browder for Pennsylvania Dixie Cement Corporation; John C. Clous for Lehigh Corporation; John B. Oliver for Lone Star Corporation; C. E. Jones for International Paper Corporation; G. R. Gordon for Container Corporation; M. D. Baldbland for Hudson Paper Company; W. H. Backer for Rayonier Corporation; R. Y. Patterson for United States Steel Corporation; J. B. Johnson for Florida Portland Cement Company; J. C. Fokes for Florida

Crushed Stone Company; Frank E. Harrison for Florida State Road Department; Carl Dodson and A. J. Riebe for Newport Industries Corporation; Lewis H. Hill, Jr., for Lewis Transportation Company; Martin Sack for Petroleum Carrier Corporation; and Frank Hobbs for Redwing Carriers, Inc.

[fol. 63] The petitioners in this case seek authority from this Commission to increase their intrastate rates, fares and charges in amounts corresponding with such increases as were allowed the Railroads by the Interstate Commerce Commission in its Docket Ex Parte No. 162 on December 5, 1946, to become effective during that period from January 1, 1947, to February 28, 1947.

At the commencement of said hearing the petitioners requested that the record in I. C. C. Docket Ex Parte No. 162 be considered as a part of the record before the Florida Commission. There being no objections interposed to this request, it was ordered that the record in I. C. C. Docket Ex Parte No. 162 be made a part of the record in this case.

Financial Position of the Railroad Carriers

The objective of the nation's railroads in petitioning the Interstate Commerce Commission last year for substantial increases in their rates, fares and charges was to secure approximately one billion dollars per year in their freight operating revenue. The estimated total operating revenue for the Class I railroads, which transport most of the total rail traffic of the country, was $7,555,000,000 for 1946, of which $5,728,000,000 would come from freight traffic, $1,271,000,000 from passenger traffic and $556,000,000 from all other operating revenue. The total operating expenses for 1946 are estimated at $6,389,000,000; total taxes, without carry-back credits, $640,000,000; net railway operating in-

[fol. 64] crease, without carry-back credit, $373,000,000; and net income, without such credit, $29,000,000. The carry-back tax credits are estimated at $174,000,000. The net railway operating income after taking into account the tax credits is estimated to be $547,000,000, and the net income $203,000,000.

Corresponding figures for the year 1947, on the basis of averaging increases granted by the Interstate Commerce

Commission last year pending final decision in Ex Parte No. 162, would result in a deficit in net income of $225,000,000.

Based upon an estimated increase of one billion in revenue ton miles over 1946, and a decrease of seventeen billion revenue passenger miles, on the basis of their proposed increases in freight rates and charges, it is estimated that the railroads net income will approximate $247,000,000.

Of great importance affecting the financial position of the railroads is the trend of wages and the prices of materials and supplies they must pay. General increases in railroad wages in 1941, 1943 and 1946, amounting on an annual basis to $1,382,000,000, and increases resulting from vacations with pay granted to employes during the same period amounting to $75,000,000 have had the effect of increasing operating costs $1,457,000,000 annually in terms of the actual and anticipated level of employment in 1946. Increased payroll taxes on the increased wages are computed as approximating $82,900,000 per year. An additional pay-
[fol. 65] roll tax of 2.25 per cent went into effect on January 1, 1947, as a result of the Crosser Act, enacted by Congress in 1946. It is estimated that this additional tax will amount to $90,000,000 or more, per year. On the basis of 1946 purchases it is estimated that increased costs in materials and supplies will be $537,000,000 per year. The cumulative effect of the increases for wages, vacations, payroll taxes, materials and supplies, that have occurred in the period from 1939 to 1946, as applied to the 1946 operations, is at the rate of $2,166,920,000 per year.

Petitioners' requested increases are based on the assumption that wages and the prices of materials and supplies in effect August 15, 1946, will continue in effect. Any substantial changes in the prices of these items will materially affect the estimate for 1947 operations.

While the foregoing figures and estimates are for the railroads throughout the country and involve interstate as well as intrastate revenues and expenses, they bear a direct relation to corresponding Florida intrastate revenues and expenses. The three large railroads operating in Florida are the Seaboard Air Line Railroad, the Atlantic Coast Line Railroad and the Florida East Coast Railroad, which

latter road lies wholly within this State. With reference to the Atlantic Coast Line Railroad, its intrastate freight revenue for the entire system produced 13.8 per cent of the road's total revenue in 1946. For the Florida East Coast Railroad; its intrastate revenues provided 18 per cent of [fol. 66] the total revenue for 1946. For the Seaboard Air Line Railroad, intrastate revenues for the entire system amounted to 5 per cent of its total revenue in 1946. 49.8 per cent of the total intrastate revenue for the Atlantic Coast Line for 1946 was produced in Florida. For the Florida East Coast Railroad all of its intrastate revenue was produced in this state. For the Seaboard Air Line Railroad 57.5 per cent of its total intrastate revenue was produced in Florida. Because of the extensive mileage operated in this state by these three large railroads, this Florida intrastate business has a substantial affect on their revenue picture.

Comparing the first eleven months of 1946 with the corresponding eleven months of 1945, the Atlantic Coast Line had an increase in operating costs of $7,766,723; the Seaboard, $5,400,000; the Florida East Coast, $1,200,000; the L. & N., $9,500,000; and the Southern $16,200,000. For the same period the same railroads had decreases in operating revenue as follows: The Atlantic Coast Line, $21,000,000; the Seaboard, $17,700,000; the Florida East Coast, $3,400,000; the L. & N., $26,900,000 and the Southern $34,000,000.

The so-called Crosser Bill, effective January 1, 1947, has already been mentioned. It is estimated by the petitioners that in 1947 this Congressional Act alone will cost the Atlantic Coast Line $1,488,120; the L. & N., $2,275,000; the Seaboard, $1,139,000; and the Southern $2,905,000. In addition, the level of material and supply prices has expanded greatly in the past five or six months, but to a large [fol. 67] extent those price increases have not yet become apparent in railroad cost for the reason that the railroads carry on hand a very heavy inventory of materials and supplies. These items used by the railroads in the latter part of 1946 were largely bought prior to that time at a lower price level. The full effect of these increases will be felt in 1947. For the Atlantic Coast Line alone it is esti-

mated that materials and supplies which they did buy in 1945 would now cost approximately $12,000,000 more than in 1945.

It is estimated by the petitioners that the increases allowed by the Interstate Commerce Commission would not be adequate to cover the increased cost suffered by the railroads in 1946, and now they are faced with enormous increases in 1947 for which nothing has been provided in the I. C. C. increase. They further contend that the request intrastate increases in all of the states, if granted, will not be adequate for their needs during 1947 and that all of their estimates and computations as to 1947 operating revenue are based on the assumption that both the interstate and the intrastate increases would be allowed.

Petitioners show that during the past several years of rapidly increasing wage levels and prices of materials, the railroad freight rate level has had no increases. The last general increase the railroads had in their rates was the Ex Parte 123 ten per cent increase, effective March 28, 1938, other than the temporary Ex Parte 148 increase which averaged less than five per cent and was in effect for only [fol. 68] a short time. On the contrary, since March 28, 1938, many important and substantial reductions have been made in the rate level on interstate traffic, and corresponding reductions contemporaneously made in the intrastate rate level in Florida and other southern states. Many of these reductions were so drastic that if the requested increases are granted the resulting rates will even then approximate only 57.7 per cent of the corresponding rate ten years ago.

Car Loadings and Composition of Traffic

A considerable change in the trend of traffic has been experienced by the railroads since the war years. The result has been something of a loss in tonnage, although that has held up to a certain extent, but the greatest effect, from a revenue standpoint, has been in the change of the character of the traffic and the length of the haul.

Low grade tonnage has replaced, to a considerable extent, high grade tonnage, and the average haul has materially decreased. During the war years the coastwise steamship

service disappeared from the Gulf and from the Atlantic and intercoastally between the Pacific and the Atlantic through the Panama Canal. Import and export traffic, whether for the Government or otherwise, comes in through ports that would not ordinarily have handled that traffic. For example, during the war years the railroads handled great amounts of molasses and syrup, alcohol and alcoholic beverages, manganese ore and vast amounts of sugar [fol. 69] through the ports of Tampa and Jacksonville, or coming through Port Everglades, that came up over the Florida East Coast Railroad to Jacksonville and delivered to its connections there which ordinarily would have moved direct to the north Atlantic ports by water.

During the war years, the railroads participated in the handling of a great amount of goods for the army and for the navy, particularly the army, that went overseas. Such traffic included automobiles, trucks, vast amounts of ammunition and supplies of all sorts for the armed services overseas.

Most of this business has now been lost to the rails and, to a certain extent, has been replaced tonnagewise by low grade traffic which produces less revenue. As a result, while the volume of freight tonnage has held up, the character of the tonnage and the length of the haul has changed to such an extent that the revenues have not held up but have substantially decreased.

Passenger Fares

The petitioning railroads also seek authority to continue in effect, without expiration date, the ten per cent increase in passenger fares allowed in 1942 as a temporary emergency measure, and which, under present authority, expires six months after the legal termination of the war.

The passenger fares applicable generally throughout the country, and presently in effect in Florida, became effective in 1936 and were increased by the aforesaid temporary [fol. 70] increase of ten per cent in 1942. Prior to 1942 coach fares had generally been on the basis of 1.5 cents per mile and they were accordingly brought up to 1.65 cents per mile by the 1942 increase. Later in 1942 these fares were

increased to 2.2 cents per mile on interstate traffic and on intrastate traffic in all but three or four states.

The system wide average revenue per passenger mile of the petitioners has declined substantially since the period following World War I. Since 1936 the average revenue per passenger mile has varied between a low of 1.753 cents in 1941 and a high of 1.916 cents in 1942. In 1945 the average revenue per passenger mile was 1.871 cents. It is estimated that the average revenue per passenger mile in 1947 will be 1.988 cents.

The year 1943 represented the peak of the net revenues received by the railroads for passenger service. Although the gross passenger revenues in 1944 exceeded those in 1943, the net revenues were actually several million less, because the increase in operating expenses was more than the increase in revenue. For the nation's railroads as a whole, the passenger revenues decreased $95,000,000 in 1945, as compared with 1944, but the net revenues from those operations decreased $220,000,000. Due to the nature of passenger services, passenger train-miles cannot be reduced ratably with a decline in passenger traffic. Therefore, a decrease in passenger revenues is reflected in the net revenues to a greater extent than a similar decrease in freight revenues. Too, the railroads cannot expect as favorable a [fol. 71] passenger car load factor in peace time as in war time.

Petitioners estimate that the revenue passenger miles in 1947 will be 26.1 per cent less than in 1946.

The estimated total operating revenue from the passenger service for the nation's railroads for 1947 is $954,000,000. A tentative separation made by the railroads of operating revenues and expenses, estimated for 1947, as between the freight and passenger services, indicates an expected deficit in net railway operating income from passenger service of $445,000,000 in 1947.

Minimum Charges

Petitioners seek authority to increase their minimum charges as follows: Minimum charges per shipment to $1; minimum charges per car to $20; minimum line-haul rates where pick-up and delivery service is afforded to 50 cents.

All other minimum charges where stated as such are proposed to be increased 25 per cent. We are of the opinion that free pick-up or delivery service, or allowance therefor, reasonably should not be given when the line-haul is less than 50 cents per 100 pounds. The proposal to increase minimum rates per car is limited to those provided in Consolidated Freight Classification Rule 13 and corresponding rules in other tariffs.

Position of Interveners With Respect to Proposed Increases

Numerous traffic associations, bureaus and private indus- [fol. 72] tries were represented at the hearing in this case, and several of them presented evidence for the consideration of the Commission. We have considered their various positions and shall briefly summarize the salient contentions of the testimony relating to the particular groups or classes of commodities. There was little, if any, testimony presented tending to deny the necessity for according the petitioners additional revenue. However, some representing particular classes of commodities contend that flat increases are not as fair as uniform percentage increases. Some have taken the position that their particular commodity cannot stand any increase, while others urge that their particular commodity be excepted from the full increase requested.

We will discuss briefly the particular commodities concerning which there appears to be some logical reason for special exceptions.

Products of Agriculture

Under this classification, sugar cane was the only commodity concerning which anyone appeared requesting exceptions from the proposed increases. The movement of sugar cane is entirely an intrastate movement. The 1946-47 crop, which is being harvested at the present time, will consist of approximately 1,012,000 tons moving from loading hoists at the fields to the mill. The industry does all the switching, assembles the train, and furnishes the cars. They own 469 cane cars of 60,000 pounds capacity each. All the carrier has [fol. 73] to do is couple the locomotive to the cars and move them to the mill. The industry pays approximately $474,- 000 freight on the annual crop under presently existing

rates. A ton of sugar cane produces 200 pounds of sugar. Sugar is still under Federal price control. On this traffic the carriers require the outbound haul of the finished product, the raw sugar and black strap molasses, from the mill. On the annual output of raw sugar the industry pays approximately $750,000 in freight for the outbound haul to the industry's refinery in Georgia. The 20 per cent increase already allowed on the interstate traffic applies to the movement of the raw sugar from the mill to the refinery. If the intrastate rates on the movement of the sugar cane from the fields to the mill is likewise increased, the industry will incur a double increase. With the price on sugar stabilized by the Federal government, the industry cannot increase the price on its raw sugar to offset the proposed freight rate increase.

Products of the Forest

Under this category there are three commodities or groups concerning which there appears to be some logical reason for special exceptions growing out of the fact that they are all raw materials moving *out of the fact that they are all raw materials moving* to the mill on which transit rates usually apply, or at least the railroad has the advantage of also moving the finished or manufactured product [fol. 74] from the mill always at a much higher rate than the raw material.

Pulpwood

The first of these is pulpwood. The paper industry pays the freight on pulpwood and was represented at the hearing. They expressed a willingness for intrastate rates to be increased on all commodities shipped and received by them to the same extent as the interstate rates were increased—with the one exception: plupwood. This industry has had two major revenue rate increases during the past several years. These were Ex Parte 123 in 1938 allowing a ten per cent increase on pulpwood; Ex Parte 148 involved a six per cent, and now the present proceeding proposes a twenty per cent, increase.

Since the ten per cent increase in 1938, the Florida mills have been operating at a considerable burden as compared

with those in some of the neighboring Southern States, such as Georgia and Alabama, inasmuch as the Ex Parte 123 ten per cent increase was not allowed in those states.

In order to overcome this resulting burden, and for the purpose of uniformity in rates on pulpwood throughout the South, the paper industry will appear before the Georgia Public Service Commission and other State Commissions supporting a 20 per cent increase in the basic rates of those states where the Ex Parte 123 ten per cent increase was not allowed. If such states permit the requested twenty per cent increase to be applied on their basic rate and Florida [fol. 75] retains both the Ex Parte 123 and Ex Parte 148 increases, it would require an increase of only 3 per cent in Florida to equalize her rates with those of the other states. If Florida eliminates the Ex Parte 148 increases, then it would be necessary to increase the Ex Parte 123 rates by 9% which is the same increase granted already in several of the other Southern States.

Waste Woods

Waste woods are the raw material for the steam distillation process of obtaining naval stores. This raw material consists of about 95 per cent old tree stumps and roots and about 5 per cent of pine knots and limbs. Five pounds of this raw material are required to produce one pound of the finished product. From this source 150 different commodities are produced which move on comparatively high rate levels. Two increases have previously been granted applicable to these waste wood raw materials—a 10 per cent increase in Ex Parte 123 and a 6 per cent increase in Ex Parte 148. The finished products moving from the recovery plants practically all bear the interstate Ex Parte 162 increases so that a corresponding increase on the intrastate movement of raw materials to the retorts, or recovery plants, would result in a double increase to the industry.

Logs

Logs moving to the mills are in much the same situation as pulpwood and waste woods, in that the finished or manu- [fol. 76] factured products moving from the mills to a large extent move in interstate commerce and already carry the

interstate Ex Parte 162 increases and will carry similar intrastate increases as a result of increases granted by this Order. Thus, a corresponding increase on the raw materials (logs) moving to the mills would result in a double increase to the industry.

Products of Mines

Wet Phosphate Rock

Under this category one commodity demands particular consideration. That is wet phosphate rock moving from the washer to the drying plant. A large amount of phosphate is mined in Florida, and is an important element in the manufacture of fertilizer. Wet phosphate rock is shipped into the main plants where it is dried, ground and re-shipped. On the shipment of the outbound materials, the maximum increases already apply under Ex Parte 162 on interstate movements and will apply on intrastate shipments under this Order. Thus, a corresponding increase on the wet phosphate rock would result in a double increase to the industry.

Florida Rate Conference

The Florida Rate Conference is an association of most of the traffic men of the State, representing various sections of the State and various industries. They opposed any further [fol. 77] horizontal increases and expressed the belief that the petitioners' estimates of future net railway operating income are entirely too pessimistic and that the requested increases should not be authorized unless and until it has been conclusively shown that the present rate structure will not yield sufficient revenue to enable the carriers as a whole to render adequate and efficient service. The Conference further took the position that if the Commission concluded that the record in this proceeding justifies an increase in freight rates, then such increases should not be authorized for application in connection with rates (class or commodity) to and from the Florida peninsula, that includes the so-called "Florida arbitraries," except to the extent that such increases as are deemed proper shall be applied only to the base class and commodity rates to and from Florida peninsular points. On cross examination the Conference representative stated that they were essentially deal-

ing with the feature of the Florida arbitraries in this proceeding.

Observations

There are involved in this proceeding all the intrastate freight rates and charges, and all the passenger fares of all the railroads operating in Florida. It is a proceeding of considerable magnitude and complexity. As was stated by the representative of the Florida Rate Conference at the hearing, "in a case of this character involving as it does, divergent views on many salient points, it would be impracticable for the Commission to render a decision entirely [fol. 78] satisfactory to all concerned. Consequently, all that any of us can expect is a decision that will deal fairly with the carriers and, at the same time, one that will not do violence to the fundamental principles underlying the Florida statute." We have attempted to do just that. We have accorded every reasonable opportunity for those in any way affected to be heard, while not unduly delaying the matter because of the urgent need of the carriers for revenue relief. We have given the entire matter very careful study and consideration.

The rails are facing a critical period, and it is our best judgment that they cannot function successfully without materially increased rates. We are convinced that it is in the best interest of the State that the railroads be accorded every opportunity to procure the revenue they need in order that good service may be rendered. No one can say with certainty what revenue will be produced by the increases allowed. If the resulting rates prove unreasonably high, they may later be reduced. Intrastate rates in Florida are the rates of this Commission, always under its jurisdiction for the purpose of proper adjustments.

Findings

From the evidence adduced at said hearing and from a careful consideration of the entire record, we find:

(1) In order that the State of Florida may have an adequate, sustained transportation system for the [fol. 79] benefit and welfare of the public, and in order that freight rates and charges shall be such as to move

the greatest volume of traffic while providing adequate and efficient transportation at the lowest cost; consistent with the furnishing of such service; and, to enable the petitioning carriers to provide that service, it is necessary that there be substantial increases in the basic freight rates and charges of petitioners and the continued maintenance of the present temporarily increased basis of passenger fares and charges.

In said Order No. 1443 the Florida Commission included in its findings, among others, that the basic freight rates and charges increased or continued in effect by said order to the extent therein found and approved in detail would be just and reasonable, but the full amount of the increases in the form proposed in the petition of the railroads has not been shown to be just and reasonable in respects not therein approved.

(3) Except as otherwise specifically provided in these findings, or in the appendix hereto, all basic freight rates and charges of the petitioners should be increased for the future by 20 per cent and, as so increased, will be just and reasonable. By basic freight rates and charges are meant those now in effect—excluding, however, from such freight rates and charges as now in effect such portion thereof as represents the temporary increases previously approved by this Commission corresponding to the inferim increases author- [fol. 80] ized by the Interstate Commerce Commission on June 20, 1946, in its Docket No. Ex Parte 148.

(4) The basic freight rates and charges on the commodities classified in Appendix 1 are increased by the specific percentages or amounts shown therein, and such rates increased as provided therein will be just and reasonable for the future.

(5) The following increases in the basic freight rates and charges for miscellaneous services will be just and reasonable for the future:

Rates and charges on milk and cream in passenger and freight service, including all commodities listed in the applicable basic milk and cream tariffs are increased 15 per cent.

Rates and charges for protective services published in applicable perishable protective tariffs are increased 15 per cent.

Charges for collection on delivery services are increased 25 per cent.

Rates and charges for switching, including intraplant and intraterminal switching, whether or not absorbed by long line-haul carriers are increased 25 per cent.

Where tariffs provide for absorption of charges for switching subject to a stated minimum revenue for a line-haul carrier, such stated minimum shall be increased by the same amount as the charge or charges for switching.

Charges for loading or unloading provided in Section 2 of Consolidated Classification Rule 15 are in- [fol. 81] creased to five cents per one hundred pounds.

Rates and charges for special train, trap and ferry car and crane service and for handling railway equipment on its own wheels are increased 25 per cent.

All commodity freight rates and rates and charges on freight in truck bodies are increased 25 per cent.

Rates and charges for handling commodities (except milk and cream) in baggage or passenger train service, including excess baggage but excluding corpses, are increased 25 per cent.

Except as otherwise herein specifically provided, an increase of 25 per cent is made in the basic rates and charges for accessorial and terminal services such as storage, handling, loading, unloading, reconsignment, diversion, fabrication, other transits, weighing, etc., other than (a) demurrage charges on which no increase is hereby authorized, and (b) charges for handling, loading or unloading export, import, coastwise or intercoastal traffic which do not affect the measure of the line-haul rate and are not in addition to the line-haul rate on which there will be no increase.

Terminal railroads may increase their charges to the railroads for performing the loading and unloading of livestock at public stockyards by 15 per cent, and such increased charges should be absorbed or otherwise paid [fol. 82] by the railroads performing the line-haul

transportation except when they accrue for unloading or reloading enroute at the request of the shipper, consignee or owner, or to try an intermediate market, or to comply with quarantine regulations.

Minimum charges per shipment are increased to $1, except on single shipments of milk and cream. Minimum charges per car in line-haul service as provided Consolidated Classification Rule 13 and corresponding rules in other tariffs are increased to $20. Minimum line-haul rates where pick-up and delivery services are included are increased to 50 cents.

(6) Where through rates are made by combining separately stated rates (two factor or multiple factor rates), such combination will not be increased separately, except as otherwise provided as to rates on grain and grain products, but a single increase should be applied to the entire through rate.

(7) Fractions should be disposed of as follows: In connection with rates or charges which without the emergency increases of 1946 are approximately 5 cents or lower, resolve fractions to the nearest ¼ cent; rates higher than approximately 5 cents but not higher than approximately 10 cents, resolve fractions to the nearest ½ cent; rates higher than approximately 10 cents, resolve fractions to the nearest whole cent, except on grain and grain products and articles taking the same [fol. 83] rates; in all instances resolve fractions in connection with commodity rates to the nearest ½ cent; when in connection with rates rounded out to ¼ cent, increase to the next higher ¼ cent; and similarly in connection with rates rounded out to ¼ and to whole cents.

(8) The increase in passenger fares authorized by Order of this Commission corresponding to the increases authorized by the Interstate Commerce Commission in Ex Parte No. 148, dated January 21, 1942, as modified therein October 30, 1945, shall be continued in effect without expiration date; and for the future will be just and reasonable.

(9) Where carriers earn specific stated amounts as their compensation or division out of joint through

rates, such amounts should be increased in the same percentages as the joint through rates.

(10) When accessorial charges or switching charges are increased as herein prescribed, and such charges prior to the increase were absorbed wholly or in part by a carrier, the amount of the absorption should be increased in the same proportion as the increase in the accessorial or switching charge.

(11) The increases in freight rates and charges provided for by this Order shall supersede and be in lieu of the emergency increases authorized by this Commission in 1946, corresponding with similar increases authorized by the Interstate Commerce Commission in its [fol. 84] report and order of June 20, 1946, in Docket No. Ex Parte 148.

(12) No increases shall apply on the following traffic:

(a) Logs moving to the mills.

(b) Wet phosphate rock moving from the washer to the drying plant.

(c) Waste woods such as stumps, knots and limbs moving to the retorts or recovery plants.

(d) Sugar cane moving to the mills.

(13) On pulpwood an increase of 9 per cent on the Ex Parte 123 rates shall apply.

(14) The increased rates and charges authorized by this Order shall become effective at 12:01 A.M., Sunday, March 16, 1947, and approximate tariffs shall be filed by petitioners with this Commission.

(15) The record in this proceeding will be held open and this Commission will retain jurisdiction for the purpose of giving consideration to any necessary readjustments or corrections which the circumstances may warrant when brought to our attention in the proper manner.

(16) Appropriate Orders will be entered by this Commission modifying or amending wherever it may be necessary any outstanding Orders of this Commission in order to permit the increases authorized herein to be established and become effective.

Now, therefore, in consideration thereof, it is ordered and adjudged by the Railroad Commission of the State of Florida as follows:

[fol. 85] (1) That the increased freight rates and charges and the passenger fares herein found to be just and reasonable for the future and set out in the appendix hereto be, and the same are, hereby approved and prescribed as the lawful intrastate rates, fares and charges for all railroads operating within the State of Florida, effective at 12:01 A. M., Sunday, March 16, 1947, and appropriate tariffs shall be filed with this Commission showing such increases.

(2) That no increase shall apply on the following traffic:

(a) Logs moving to the mills.

(b) Wet phosphate rock moving from the washer to the drying plant.

(c) Waste woods such as stumps, knots and limbs moving to the retorts or recovery plants.

(d) Sugar cane moving to the mills.

(3) On pulpwood an increase of 9 per cent on the Ex Parte 123 rates shall apply.

(4) All previous applicable Orders of this Commission, wherever necessary, are hereby modified or amended so as to permit the increases herein authorized to become effective as aforesaid.

Done and ordered by the Railroad Commission of the State of Florida, at Tallahassee, Fla., this 11th day of March, 1947.

M. B. Douglass, Chairman.

[fol. 86] Appendix 1.

Basic freight rates, whether class or commodity, and charges, on the commodities hereinafter specified, are increased in the amounts and in the manner set forth as to each commodity class or group. The commodity group numbers (or commodity class numbers) used in this appendix, and throughout the entire Order, for convenience, are those specified in the Order of Division Four of Interstate

Commerce Commission of November 22, 1927, *In the Matter of Freight Commodity Statistics*, which was in effect at the date of the submission herein, although a new list of commodity classes with articles assigned thereto has been promulgated by Order of Interstate Commerce Commission, Division One, September 24 and October 16, 1946, to become effective January 1, 1947. They are intended generally to cover the items customarily included by the carriers in their reports to the Commission under each numbered description, as of the date for the submission.

Products of Agriculture—Groups 10-101, inclusive, and 130-164 inclusive

An increase of 15 per cent is applied for line-haul service on the commodities shown below, in carloads, whether moving on class or commodity rates.

[fol. 87]

Group or Class Number.	*Commodity Description*
10	Wheat.
20	Corn.
30	Oats.
40	Barley and rye.
41	Rice.
42	Grain, n.o.s.
50	Flour, wheat.
51	Meal, corn.
52	Flour and meal, edible, n.o.s.
61	Mill products, n.o.s., not specially prepared for human consumption.
70	Hay and alfalfa.
71	Straw, also rice and flax straw.
80	Tobacco, leaf, unmanufactured.
90	Cotton in bales.
91	Cotton linters, noils, and regins.
100	Cottonseed.
101	Cottonseed meal and cake.
130	Potatoes, other than sweet.
140	Cabbage.
141	Onions.
142	Tomatoes.

Group or Class Number	*Commodity Description*
143	Vegetables, fresh, n.o.s., not cold pack.
150	Beans and peas, dried.
152	Vegetables, dry, n.o.s.
160	Vegetable-oil cake and meal, except cottonseed.
161	Peanuts, in the shell.
162	Flaxseed.
163	Sugar beets.
[fol. 88] 164	Products of agriculture, n.o.s., except the following: Ajowan seed; algarrobilla; almonds; anise seed; arrowroot; beans, cocoa; beans, vanilla; birdseed; bulbs, plant; butternuts; cassia; castor beans; chestnuts; chufas; coconuts, fresh; coffee; copra; ferns, florists' stock; fruit juices, n.o.i.b.n.; fruit trees; grasses, n.o.i.b.n.; hemp (hemp fiber); herbs, n.o.i.b.n.; honey beans (St. Johns bread); istle (istle fiber); ivory nuts (vegetable ivory); jute (jute fiber); licorice root; manila fiber; mushrooms, fresh or dried; mushroom spawn; mustard mushroom spawn; mustard, ground; nursery stock, n.o.i.b.n.; nut meats; nuts, edible, n.o.i.b.n.; nux vomica beans, ground or whole; peanut grits; peel, fruit; pepper (spice); plants, live; plants, n.o.i.b.n.; pulp, fruit; ramie fiber; roots, n.o.i.b.n.; sage; sago; seed, n.o.i.b.n.; shrubbery; sisal fiber; spices; Tahiti beans; Tampico fiber; tea or tea dust; tonka beans; [fol. 89] tow fiber; trees, live, n.o.i.b.n.; vegetable fiber, n.o.i.b.n.; vines; walnuts; and *zacaton* fiber.

Exception: No increases shall apply on sugar cane to the mills.

The increases authorized are applied to each one-factor rate, including proportional and reshipping rates, and to each factor of a multiple-factor through rate, with the understanding that as soon as practicable, the carriers will readjust resulting rates to restore rate relationships and market, gateway, and port equalizations, to adhere to rate-break principles now in effect, such readjustment to reflect an average increase as closely equivalent to a 15 per cent increase in revenue as may be practicable.

Animals and Products—Groups 180-201 inclusive, and 230

An increase of 15 per cent is applied for line-haul service on the commodities shown below, in carloads, whether moving on class or commodity rates.

Group or Class Number	*Commodity Description*
180, 181	Cattle and calves.
190, 191	Sheep and goats.
200, 201	Hogs.
230	Poultry, live.

[fol. 90] Animal or Poultry Feed, N. O. I. B. N., and Starch —Group 701

Whenever these commodities or articles are included in the list of articles taking grain, grain products, or by-products rates, the same increase is applied as for grain and grain products.

Cotton in Bales—Group 90

Subject to a maximum of 10 cents per 100 pounds, applied to the lowest rate with the highest carload minimum weight, and the same increase in cents per 100 pounds applied to the other rates between the same points.

Citrus Fruits, Other Fruits and Vegetables—Groups 110 through 143

Subject to a maximum of 13 cents per 100 pounds.

Wool—Group 260

Subject to a maximum of 20 cents per 100 pounds.

Anthracite Coal, Bituminous Coal, including Lignite, and Coke—Groups 290, 300 and 310

Except on lignite: an increase of 15 cents per net ton or 17 cents per gross ton, as rated, is applied to all basic rates [fol. 91] up to $1 per ton as rated; an increase is applied of 25 cents per net ton or 28 cents per gross ton as rated on basic rates over $1 and not over $2.25 per ton as rated; and an increase of 30 cents per net ton or 34 cents per gross ton as rated is applied on basic rates over $2.25 per ton as rated.

On lignite: an increase of one-half of the amount above authorized is applied to the basic rates stated.

When such commodities are transported by water preceded and followed by rail transportation, or transported by rail at a combination of two separately established rates, the aggregate amount of the two rail factors shall be considered as the rate to be increased as provided in first paragraph under this heading, and be subjected to a single increase as therein authorized.

Iron Ore—Group 320

An increase of 12 cents per ton, gross or net, as rated is applied to all rates.

Alumina and Bauxite Ore and Concentrates—Group 333.
Alumina, n.o.i.b.n.—Group 392

An increase of 12 cents per ton, gross or net, as rated.

[fol. 92] Gravel and Sand—Group 350
Fluxing Stone—Group 392
Stone, Broken, Ground or Crushed—Group 351
Furnace Slag—Group 692
Agricultural or Ground Limestone (In Open Top Cars)—Group 640
Cinders—Group 701

An increase of 15 cents per ton.

Petroleum, Crude—Group 360
Asphalt—Group 370
Tar, Petroleum—Group 453
Tar, Coal, and Tar, n.o.i.b.n.—Group 701

In tank cars, 20 per cent, subject to a maximum of 6 cents per 100 pounds.

Salt—Group 380

Subject to a maximum of $1.20 per ton or 6 cents per 100 pounds.

Phosphate Rock—Group 390

Subject to a maximum of 30 cents per ton.

Exception: No increase shall apply on wet phosphate rock from the washer to the drying plant.

[fol. 93] Sulphur—Group 391

Subject to a maximum of 2 cents per 100 pounds or 40 cents per net ton, subject to the proviso that differentials of water-carrier rates under rail rates as of June 30, 1946, shall be restored without reduction of the water-carrier rates, actual or as herein authorized.

Industrial Sand—Group 392

Subject to a maximum of 30 cents per ton.

Clay or Kaolin, Kyanite Ore—Group 392
Salt Cake (Sodium Sulphate or Sulphate of Sodium)—Group 701

Twenty per cent, subject to a maximum of 6 cents per 100 pounds, or $1.20 per net ton.

Raw Dolomite—Group 392

Subject to a maximum of 30 cents per ton, when in closed equipment; when in open equipment, the same increase as on fluxing stone.

Bituminous Asphalt Rock, Asphaltic Limestone, Asphaltic Coated Rock, Sand, Gravel, Crude Gypsum and Gypsum Rock, Perlite Rock, Phosphatic Sand and Clay, Ground or Pulverized Limestone in Closed Equipment—Group 392

Subject to a maximum of 30 cents per ton.

[fol. 94] Logs—Group 400

No increase on logs moving to the mills.

Wood (fuel)—Group 402

Maximum 8 cents per 100 pounds.

Pulpwood (fuel)—Group 420

The increase shall be 9 per cent on Ex Parte 123 rate.

Waste Wood (such as stumps, knots and limbs)—Group 443

No increase on traffic moving to the retorts or recovery plants.

Posts, Poles, and Piling, Ties, Railroad Lumber, and Articles taking Lumber rates, Box, Crate and Cooperage Materials Veneer and Build-up Wood—Groups 401, 410, 431 and 432.

Building Woodwork (Mill Work)—Group 697
Wood Pulp, Waste Paper and Rags—Group 701

Twenty per cent; maximum 10 cents per 100 pounds, except that articles in Group 430 which do not take lumber rates, are increased 20 per cent without the maximum limitation.

[fol. 95] Petroleum and Petroleum Products—Groups 450 and 451

In tank cars, 20 per cent, subject to a maximum of 6 cents per 100 pounds.

Vegetable Oils—Groups 460, 461 and 462
Vegetable Oils, n.o.i.b.n.—Group 701
Lard and Lard Oil—Group 222
Lard, Leaf, not rendered—Group 210
Lard substitutes, n.o.i.b.n.—Group 701
Fish Oil—Group 280

Twenty per cent, subject to a maximum of 12 cents per 100 pounds.

Sugar (Beet or Cane)—Group 470

Twenty per cent, subject to a maximum of 10 cents per 100 pounds.

Exception: No increase shall apply on sugar cane to the mills.

Iron, pig—Group 490

Iron and steel, rated 6th class, n.o.s.—Group 491

Rails, fastenings, frogs and switches—Group 500

[fol. 96] Cast iron pipe and fittings—Group 510

Iron and steel pipe and fittings, n.o.s.—Group 511

Iron and steel, Nails and Wire not woven—Group 512

Iron and steel, rated 5th class, n.o.s.—Group 513

Railway car-wheels, axles, and trucks—Group 583

Scrap iron and scrap steel—Group 693

Twenty per cent, subject to a maximum of 10 cents per 100 pounds, but not in excess of $2 per net or gross ton as rated.

Aluminum: Ingot, Pig or Slag—Group 523

Twenty per cent, subject to a maximum of 10 cents per 100 pounds, but not in excess of $2 per net or gross ton as rated.

Aluminum Bars, Castings, Pipe, Sheet Ware and Aluminum Articles, n.o.i.z.n.—Group 701

Twenty per cent, subject to a maximum of 12 cents per 100 pounds, but not in excess of $2.40 per net or gross ton as rated.

[fol. 97] Cement, Natural or Portland, Building—Group 540

Lime—Group 560

Plaster (stucco or wall) and dry Kalsomine—Group 561

Twenty per cent, subject to a maximum of 6 cents per 100 pounds, or $1.20 per net ton.

Brick and Clay Products, Cement and Concrete Building Blocks—Groups 550, 551 and 552

Twenty per cent, subject to a maximum of 30 cents per net ton, or 1.5 cents per 100 pounds, except as to fire brick

and other refractory clay products, 20 per cent, subject to a maximum of 6 cents per 100 pounds, or $1.20 per net ton.

Fertilizers, n.o.s., including Potash—Group 640
Diatomaceous or Infusorial Earth—Group 701

Twenty per cent, subject to a maximum of 6 cents per 100 pounds, or $1.20 per net ton.

Canned Food Products, n.o.s.—Group 680

Twenty per cent, subject to a maximum of 13 cents per 100 pounds.

[fol. 98] BEFORE THE RAILROAD COMMISSION OF THE STATE OF FLORIDA

Order No. 1443 (Supplement)

ORDER EXTENDING EFFECTIVE DATE ON INCREASES ALLOWED ON ROAD AGGREGATE—March 12, 1947

By inadvertence there was omitted from original Order No. 1443, Docket No. 1533, provision making increases allowed on Road Aggregate effective at 12:01 A. M., Monday, June 16, 1947, ninety days after its effective date of other increases allowed in said original Order.

The State of Florida, through its Road Department, is engaged in an extensive road construction program; the over-all program amounts to approximately $65,000,000 and a very substantial part of the 1946 construction, though planned for that year, was carried over to 1947, due to the failure of the railroads to provide sufficient cars to move the necessary materials used in this construction program.

A mile of road, taking the standard nine seven-nine type of concrete pavement, requires 1,540 tons of sand, 2,600 tons of gravel or 2,700 tons of crushed stone and 3,900 barrels of cement. It is estimated that the Ex Parte 162 [fol. 99] increases will increase the Highway Department's over-all program of approximately 2 per cent.

The lime rock industry and the State Highway Department contend that neither the industry nor the contractor nor the State should be penalized by immediate increases

when a substantial portion of their traffic could have moved before the increases had the railroads furnished sufficient cars to handle the traffic. They have not opposed the increases, but have only requested that such increases as are granted not become effective for a period of ninety days from the date of the Order.

The Commission has considered the situation very carefully as to Road Aggregates, and the full Commission is of the opinion that the full increases thereon, as provided for in Appendix I of original Order 1443, Docket No. 1538, are authorized and will be just and reasonable for the future.

However, a majority of the Commission is of the opinion that such increases should not become effective for a period of ninety days from the date of this Order, or until 12:01 A. M., Monday, June 16, 1947.

Now, therefore, in consideration thereof, it is Ordered and Adjudged by the Railroad Commission of the State of Florida that the increases on Gravel and Sand—Group 350; Stone, broken, ground or crushed—Group 351, and Related Articles published in Item 450, Agent R. H. Hoke's Freight Tariff 427-D, I. C. C. 763, as set out in Appendix I attached to the original Order No. 1443, Docket No. 1538, be, and [fol. 100] the same are, hereby confirmed and approved, to become effective at 12:01 A. M., Monday, June 16, 1947, and said original Order and Appendix are hereby amended in that regard.

Done and Ordered by the Railroad Commission of the State of Florida, at Tallahassee, Florida, this 12th day of March, 1947.

Jerry W. Carter, Acting Chairman.

DISSENTING OPINION

I cannot agree with the foregoing supplementary order. The petitioning railroads have proven a pressing need for substantial revenue increases. I can see no reasonable excuse or justification for imposing the increases on the industries and shipping and receiving public of the state and, at the same time, exempting, even for ninety days, the State of Florida from the same increases.

It is common knowledge that there is, and has been for some time, a serious shortage of freight cars. This shortage is due to two things. First, the shortages in materials which go into their manufacture; and, second, the dwindling revenues of the carriers has handicapped them in procuring new and additional equipment. In addition, the distribution of all cars has been under the jurisdiction of the Office of Defense Transportation and the Interstate Commerce Commission since the beginning of the war. The railroads, therefore, were unable to meet the demands for cars in many instances.

[fol. 101] In view of these circumstances, I am unwilling to exempt the State even temporarily from increased rates and charges which the individual citizens of the State must pay.

W. B. Douglass, Chairman.

Appendix 3

Before the Florida Railroad and Public Utilities Commission

Order No. 1466 (C)
Docket No. 1574

In re: Application of rail lines for general increase in intrastate freight rates and charges

Order

This Commission has previously entered three Orders in this Docket. *The first, Order No. 1466, dated November 10, 1947, denied the temporary increases of 10% requested by the carriers. The second, Order No. 1466(A), dated April 9, 1948, granted increases of twenty per cent generally with certain exceptions. The third, Order No. 1466(B), dated May 12, 1948, merely clarified the exceptions contained in Order No. 1466 (A) relating to fertilizer and fertilizer materials.* This Docket is the intrastate counterpart of I. C. C. Docket Ex Parte No. 166 recently pending before the Interstate Commerce Commission.

Subsequent to the entry of the aforesaid Order by this [fol. 102] Commission, the Interstate Commerce Commission entered an Order on April 13, 1948, in Docket Ex Parte No. 166, authorizing increases in the railroad interstate basic rates and charges of 25 per cent within Southern territory and 25 per cent interterritorially. Shortly thereafter the rail lines herein petitioned this Commission for authority to make increases in intrastate freight rates and charges applicable within the State of Florida corresponding to the increases authorized by the Interstate Commerce Commission for interstate application in its said Order of April 13, 1948.

On June 23, 1948, this Commission held a public hearing on said supplemental petition. Thereafter, on July 27, 1948, the Interstate Commerce Commission entered its further Order in Ex Parte No. 166 making certain modifications in its previous Orders. Those modifications included both increases and decreases; however, the effect was a further increase in net freight revenue for the carriers, which on the basis of the normal, constructive year the Interstate Commerce Commission estimated at approximately $67,400,000 annually. On August 3, 1948, the carriers herein filed their third supplemental petition with this Commission requesting similar modifications.

The three major carriers operating within the State of Florida, The Atlantic Coast Line, The Seaboard Air Line and The Florida East Coast, which handle the vast majority of the traffic in this State, presented most of the evidence for the petitioning carriers.

[fol. 103] ACCOUNTING AND STATISTICAL EVIDENCE

The evidence of the Florida East Coast Railway Company was, with the exception of the statement that that carrier should receive from the increase on intrastate freight traffic $50,000.00 monthly and was receiving but $13,000.00, restricted to the results from operations for the years 1936 to 1947 inclusive, the revenues and expenses for the first four months of 1947 and 1948, and to the needs of that carrier for additional revenues.

Exhibit No. S-15 shows that with the exception of the years 1942 to 1946, inclusive, that carrier had a deficit from

passenger service operations which reached an all-time high of $2,028,333 in 1947.

Our records, which were stipulated into the record, show that for the 20 year period, 1928 to 1947 inclusive, the first three months of the year's freight and passenger revenues represented 31.1059% and 37.9574% respectively, of the year's freight and passenger revenue. Expanding the freight revenue for the first three months to a yearly basis produced a freight operating revenue of $18,508,566 as compared to the highest freight revenue ever earned by that line of $17,057,335 in 1943. Expanding the passenger revenue to a yearly basis produces a total of $7,364,221, or a total of over $25,500,000 for freight and passenger transportation only. This $25,500,000 is $260,000 greater than the average total revenues, including mail, express, switching, etc., for the five years 1941 to 1945, inclusive. [fol. 104] Exhibit No. S-1, sheet No. 6, shows that expanded upon the percentage which the first four months' freight revenue bore to the year's revenue for the years 1945, 1946 and 1948, the 1948 freight revenue would be $101,441,726. Based upon the percentage relationship of the first three months to the year's freight revenue for the period 1928 to 1947, inclusive, the freight revenue of the Atlantic Coast Line Railroad Company in 1948 will be $104,853,459, the largest freight revenue received by that carrier.

Exhibit S-21 reflects the estimate of the Seaboard Air Line Railroad Company for 1948 and shows the estimate, exclusive of Ex Parte 166 increases, to be $90,000,000, and the increase from interstate traffic under the interim increase of 20 per cent to be $14,524,893, making a total of $104,524,893. This estimate appears to be reliable and is but little less than the estimate of this Commission's staff. Based upon the 20 year period, 1928 to 1947 inclusive, the freight revenue of the first three months represented 26.1809 per cent of the year's freight revenue; expanding the freight revenue for the first three months ($27,702,193) produces $105,810,698, or slightly more than 1 per cent higher than the carriers' estimate and about $11,413,000 more than the largest freight revenue ever earned by this carrier.

The Interstate Commerce Commission in its report and

order, under date of April 13, 1948, commented upon the fact that the estimated increase in the volume of traffic was too high; that unsettled labor conditions, work-[fol. 105] stoppage in the coal-mining and packing house industries, unusually severe and long-continued bad weather conditions, and shortage of materials had all contributed to the decrease in the estimated volume of traffic. It likewise referred to the latest available operating ratios of the largest lines with the comment that such ratios speak for themselves.

Florida operations were not materially affected by the work stoppages in either coal-mining or packing house industries because none of the three Florida roads, handling about 90% of the volume of traffic, have any coal traffic to speak of. This, however, is not true with respect to the Southern District and especially is not true of either the operations of the Louisville and Nashville Railroad and the Southern Railroad.

From the above it is obvious that the reasons which appear to have been persuasive in influencing the Interstate Commerce Commission in increasing the interim rates from twenty to twenty-five per cent in the Southern Region are of but minor importance with respect to Florida intrastate traffic.

With respect to the operating ratios to which reference is made above and which appear to have had some weight in the decision of the Interstate Commerce Commission, Exhibits S-59 and S-60 dealing with the three major carriers operating to, from and within the State of Florida, hereinafter referred to as the "Florida Lines," reflect the following:

[fol. 106] For the three months ended March 31, 1948, the operating ratios applicable to the Southern Region are much more favorable than those for any other region or district. The system operating ratios of the three Florida lines are more favorable than those of the Southern Region and the Florida operating ratios of the three Florida lines and are more favorable than the system ratios. This despite the fact that the Florida operating ratios do not comprehend any of the increased revenue which will inure to the Florida lines as a result of our Order No. 1466(A) in Docket No. 1574, dated April 9, 1948.

The Interstate Commerce Commission in increasing the interim percentages in its order of April 13, 1948, excepted from such increases Western territory, other than Zone I of Western Trunk-Line territory, because of more favorable conditions and with equal justification this Commission is of the opinion that no further general increase in ad interim rates should be granted on Florida intrastate traffic at this time.

The carriers' petitions, therefore, requesting that the general percentage increases be raised from twenty to twenty-five per cent on intrastate freight rates and charges applicable within the State of Florida should be denied.

Consolidated with the hearings in this Docket were carriers' petitions for rehearing on the Exceptions contained in our Order No. 1464, Docket No. 1538, which exceptions were:

(1) Logs moving to mills.

[fol. 107] (2) Wet phosphate rock moving from washers to drying plants.

(3) Waste woods, such as stumps; knots, limbs, moving to retorts or recovery plants.

(4) Sugar cane moving to the mills.

(5) Increase of only 9 per cent on pulpwood.

(6) Postponement to June 16, 1947, or for a period of 90 days after the effective date of the other increases, of the 20 per cent allowed on road aggregates.

It is the opinion of this Commission that no evidence has been submitted by the carriers which would warrant a reconsideration of the aforesaid Exceptions in Docket No. 1538, Order No. 1464. The petition for rehearing, therefore, should be denied.

In the present Docket No. 1574, we excepted certain commodities from the 20 per cent increases allowed under our Order No. 1466(A). Those Exceptions were set out in Findings Numbered 3 to 10 inclusive of said Order. The Commission is of the opinion that these same Exceptions should be continued in effect until the further Order of this Commission.

At the hearings in this proceeding some protestants requested that "Sulphur" be considered as a fertilizer or fertilizer material, and that rates on phosphatic sand and

clay be restricted to the ground limestone level of rates. Rule 11, Section 3—Rules Governing the Transportation of [fol. 108] Freight by Railroads—as promulgated by this Commission reads as follows:

> "The term 'fertilizer' embraces the following and like articles, when intended to be used as fertilizers, to-wit: Sulphate of Ammonia . . . *sulphur*, muck . . . and like articles when intended to be used as fertilizers."

Under this rule "Sulphur" would carry the same rate as "fertilizer and fertilizer materials." Also, the Commission is of the opinion that the rates on phosphatic sand and clay should be restricted to the same level of rates applicable on ground limestone, which is considered as a fertilizer or fertilizer material and on which no increases have been allowed. The request that the same exceptions should apply to phosphatic sand and clay should be granted.

The request of tank truck petroleum carriers that rate disparities on bulk petroleum be taken care of in this proceeding should be denied. The relationship between truck rates and rail rates on bulk petroleum has been fixed by this Commission in another Docket and will be considered only in some future proceeding in that Docket.

There appears to have been considerable confusion in interpreting Finding Number 11 in Order No. 1466(A), as to class rates, apparently due to our failure to specifically state that the rates as of March 10, 1947, should be increased 10.25 per cent and that the rates so revised would then be subject to the full 20 per cent increase. The method stated above conforms to the basis prescribed by the Interstate [fol. 109] Commerce Commission in its Order of July 7, 1947, in I. C. C. Docket No. 28300, which embraced its findings in Ex Parte No. 162.

The Interstate Commerce Commission's Order in Docket No. 28300 specifically restricts the revision to class rates governed by classification ratings and as we are tracking the I. C. C. Order we should so restrict our revision. Therefore, petitioner's request that our Order be restricted to class rates governed by classification ratings should be granted.

The proposal of the Florida Rate Conference that this

Commission prescribe for intrastate application in Florida the class rates, commodity rates and exception ratings that are in effect on the date of this Order on interstate traffic between points within other Southeastern states goes beyond and broadens the issues of this proceeding. In the first place the revised class rates should be restricted to traffic moving under and governed by classification ratings; and commodities governed by exception ratings should not be comprehended in this revision. In the second place there is no evidence of record in this proceeding which warrants the elimination of arbitraries on classes below 7th class intrastate. In the third place, the arbitraries intrastate were prescribed in a proceeding in which nothing but the arbitraries were involved and they should be removed, if warranted, under a similar proceeding.

In order to clarify Finding No. 11, in Order No. 1466(A), and to preclude any further confusion and misunderstand- [fol. 110] ing with respect to the Commission's findings, we attach to this Order three appendices, as follows:

(A) A first class mileage scale of rates restricted to classification ratings for application intrastate in Florida on and north of the Seaboard Air Line Railroad Company between Jacksonville and Chattahoochee, Florida, and also applicable on the first seven classes in Peninsular Florida.

(B) A first class scale of rates, including the arbitrary, restricted to classification ratings for application intrastate in Peninsular Florida on classes below 7th class. This scale to be the scale reflected under Appendix "A" plus the arbitraries to be prescribed and reflected under Appendix "C."

(C) A first class arbitrary mileage scale of rates restricted to classification ratings for application intrastate in Peninsular Florida on classes below 7th class on traffic moving from and to Peninsular Florida to and from points on and north of the Jacksonville-Chattahoochee, Florida, line of the Seaboard Air Line Railroad Company. This scale to be the original scale prescribed in Order No. 977, Docket No. 1000 under date of October 29, 1928, increased by 10 per cent under Docket No. 1321 (Ex Parte No. 123) reduced 10 per cent

under Finding No. 11 of this Order and increased 22.5 per cent under Finding No. 11 of this Order.

[fol. 111] Each of the above scales to be subject to the full 20 per cent increase authorized in Order No. 1466 (A).

While it is the opinion of this Commission that all arbitraries above referred to and now existing on traffic moving between points in Peninsular Florida and points north of the Jacksonville-Chattahoochee, Florida line of the Seaboard Air Line Railroad should be eliminated, nevertheless such a desirable result cannot be reached in this particular proceeding. It is to be understood, however, that we use the "arbitraries" in developing the Appendices hereto attached through necessity, rather than choice, and we do not mean to infer that we approve the application of "arbitraries" on any Florida traffic.

The interim adjustment which was authorized in our Order No. 1466 (A) should continue in effect until July 1, 1949, unless sooner modified by Order of this Commission. The carriers should continue to apply the increases therein granted as a percentage increase in the amount of the total freight charges, as shown by the freight bill, exclusive of the 3 per cent Federal transportation tax as provided for in our Order No. 1466 (A).

It is possible that under the percentage increases here approved, there may be some instances in which the increases, in absolute amounts, will exceed the maximum hold-downs set out in carriers' petitions. In such event, the maximum hold-downs will apply, rather than the percentage increases.

The record in this proceeding will be held open for further [fol. 112] consideration, pending final determination of the issues involved. Appropriate Orders for relief from the Florida Long and Short Haul Law, Section 350.56, Florida Statutes, 1941, and Am. Freight Rule No. 2 will be entered.

The carriers should have 30 days from the date of this Order within which time to put into effect the mileage scale of rates shown in Appendices A, B and C hereto attached and made a part of this Order. All other parts of this Order are effective immediately.

Now, therefore, in consideration thereof, it is ordered,

adjudged and decreed by the Florida Railroad and Public Utilities Commission that the petition for further increases in Florida intrastate rail rates and charges be, and the same is, hereby denied until the final Order of this Commission in this Docket.

It is further ordered and adjudged that the 20 per cent increases granted in Order No. 1466 (A) be, and they are, hereby continued in effect until July 1, 1949, unless sooner modified or changed by Order of this Commission.

It is further ordered and adjudged that the carriers make effective, on or before 30 days from the date of this Order, the mileage scale of rates shown in Appendices A, B and C attached hereto.

It is further ordered and adjudged that the findings contained in this Order be, and they are, hereby approved and shall be given effect by the petitioning carriers as indicated herein.

[fol. 113] It is further ordered and adjudged that the record and proceedings herein be held open for the further consideration of the Commission and the entry of such further Orders as may be appropriate.

By the Commission this 13th day of November, 1948.

D. Fred McMullen, *Executive Secretary.*

(Seal.)

APPENDIX "A"

A first class mileage scale of rates restricted to classification ratings for application intrastate in Florida on and north of the Seaboard Air Line Railroad Company between Jacksonville and Chattahoochee, Florida, and also applicable on the first seven classes in Peninsular Florida.

Miles	*Rate*	*Miles*	*Rate*
10	44	150	106
15	46	160	109
20	49	170	112
25	51	180	117
30	53	190	120
35	56	200	123
40	58	210	126
45	61	220	129
50	63	230	131
55	65	240	133

Miles	*Rate*	*Miles*	*Rate*
60	68	250	136
65	71	260	138
70	73	280	143
75	75	290	146
80	77	300	148
85	80	320	153
90	83	330	155
95	85	340	158
100	87	360	162
110	92	370	165
120	95	380	168
130	98	400	172
140	101	410	173

[fol. 114]

420	176	620	213
440	180	640	216
450	181	660	219
460	183	680	223
480	186	700	227
500	191	720	230
520	194	740	234
540	197	760	238
560	202	780	241
580	205	800	245
600	208		

APPENDIX "B"

A first class scale of rates, including the arbitrary, restricted to classification ratings for application, intrastate in Peninsular Florida on classes below seventh class. This scale to be the scale reflected under Appendix "A", plus the arbitraries to be prescribed and reflected under Appendix "C."

Miles	*Rate*	*Miles*	*Rate*
10	52	150	123
15	55	160	126
20	58	170	131
25	60	180	136
30	63	190	139
35	66	200	143

Miles	Rate	Miles	Rate
40	68	210	146
45	72	220	149
50	74	230	152
55	77	240	154
60	80	250	157
65	83	260	160
70	86	280	165
75	88	290	168
80	90	300	172
85	94	320	177
90	97	330	179
95	99	340	183
100	101	360	187
110	106	370	190
120	109	380	194
130	113	400	198
140	116	410	199

[fol. 115]

420	203	520	225
440	207	540	228
450	208	560	233
460	212	580	236
480	215	600	239
500	220		

Appendix "C"

A first class arbitrary mileage scale of rates restricted to classification ratings for application intrastate in Peninsular Florida on classes below seventh class on traffic moving from and to Peninsula Florida to and from points on and north of the Jacksonville-Chattahoochee, Florida, line of the Seaboard Air Line Railroad Company. This scale to be the original scale prescribed in Order No. 977, Docket No. 1000 under date of October 29, 1928, increased by 10 per cent under Docket No. 1321 (Ex Parte No. 123) reduced 10 per cent under Finding No. 11 of this Order and increased 22.5 per cent under Finding No. 11 of this Order.

	First Class Arbitrary
10 Miles and under	8
25 Miles and over 10	9
40 Miles and over 25	10
50 Miles and over 40	11
65 Miles and over 50	12
80 Miles and over 65	13
120 Miles and over 80	14
140 Miles and over 120	15
160 Miles and over 140	17
190 Miles and over 160	19
220 Miles and over 190	20
250 Miles and over 220	21
290 Miles and over 250	22
330 Miles and over 290	24
370 Miles and over 330	25
410 Miles and over 370	26
450 Miles and over 410	27
500 Miles and over 450	29
Over 500 Miles	31

Classes Below First Class To Be Worked on the Following Percentage Relationships

Classes	1	2	3	4	5	6	7	8	9	10	11	12
Percentages	100	85	70	55	45	40	35	30	25	22.5	20	17.5

[fol. 116] BEFORE THE INTERSTATE COMMERCE COMMISSION

ORDER OF INVESTIGATION—January 5, 1949

It appearing, That a petition has been filed on behalf of the Atlanta & St. Andrews Bay Railway Company and other common carriers by railroad operating to, from, and between points in the State of Florida, which said petition is hereby referred to and made part hereof, averring that in Ex Parte No. 162, *Increased Railway Rates, Fares and Charges, 1946*, and Ex Parte No. 148, *Increased Railway Rates, Fares, and Charges, 1942*, 264 I.C.C. 695, and 266 I.C.C. 537, the Commission authorized certain increases in rates and charges for the interstate transportation of property throughout the United States, which were established

July 1, 1946 and January 1, 1947, respectively, and in Ex Parte No. 166, *Increased Freight Rates, 1947*, 269 I.C.C. 33, 270 I.C.C. 81, 93, and 403, authorized certain additional increases in such interstate rates and charges, which were established October 13, 1947, January 5, 1948, May 6, 1948, and August 21, 1948, respectively; and that the Railroad Commission of the State of Florida, or its successor, the Florida Railroad and Public Utilities Commission, by report and Order No. 1443, dated March 14, 1947, and report and Order No. 1443 (Supplement), dated March 12, 1947, in its Docket No. 1538, and Report and Order No. 1466 (C), dated November 13, 1948, in its Docket No. 1574, as set out in said petition, has refused to authorize or permit said petitioners to apply to the intrastate transportation of property by railroad in Florida, increases in rates and charges corresponding to those approved for interstate application in the proceedings above cited;

[fol. 117] It further appearing, That said petitioners allege that the rates and charges which they are required to maintain for the intrastate transportation of property by railroad in Florida as a result of such refusal by the Railroad Commission of the State of Florida, or its successor, as aforesaid, cause undue and unreasonable advantage, preference, and prejudice as between persons and localities in intrastate commerce, on the one hand, and interstate commerce, on the other hand, and undue, unreasonable, and unjust discrimination, against interstate and foreign commerce;

And if further appearing, That the said petition brings in issue rates and charges for the transportation of property made or imposed by authority of the State of Florida:

It is ordered, That in response to the said petition, an investigation be, and it is hereby, instituted, and that a hearing be held therein for the purpose of receiving evidence from the respondents hereinafter designated and any other persons interested, to determine whether the rates and charges of the said respondents, or any of them, for the intrastate transportation of property, made or imposed by authority of the State of Florida, cause any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce, on the one hand, and interstate or foreign commerce, on the other

hand, or any undue, unreasonable, or unjust discrimination against interstate or foreign commerce; and to determine what rates and charges, if any, or what maximum, or minimum, or maximum and minimum rates and charges, shall be prescribed to remove the unlawful advantage, preference, prejudice, or discrimination, if any, that may be found to exist;

[fols. 118-120] It is further ordered, That all common carriers by railroad operating within the State of Florida subject to the jurisdiction of this Commission be, and they are hereby, made respondents to this proceeding; that a copy of this order be served upon each of the said respondents; and that the State of Florida be notified of this proceeding by sending copies of this order and of said petition by registered mail to the Governor of the said State and to the Florida Railroad and Public Utilities Commission at Tallahassee, Fla.;

It is further ordered, That notice of this proceeding be given to the public by depositing a copy of this order in the office of the Secretary of the Commission, at Washington, D. C., and by filing a copy with the Director, Division of the Federal Register, Washington, D. C.;

And it is further ordered, That this proceeding be assigned for hearing at such times and places as the Commission may hereafter direct.

By the Commission, Division 1.

W. P. Bartel, Secretary. (Seal.)

[fol. 121] BEFORE THE INTERSTATE COMMERCE COMMISSION

No. 30140[1]

INCREASES IN FLORIDA INTRASTATE RATES

Submitted April 11, 1950. Decided May 4, 1950

1. Intrastate freight rates and charges in Florida found to cause unjust discrimination against interstate commerce; undue preference of and advantage to certain persons and localities in intrastate commerce, and undue prejudice and

[1] This report also embraces I. & S. No. 5646, Sugar Cane, Florida to Clewiston, Fla.

disadvantage to certain persons and localities in interstate commerce.

2. Proposed interstate transit rates, minima, and rules on sugar cane, in carloads, from certain loading stations in Florida to Clewiston, Fla., found just and reasonable, except as noted in the report. Suspended schedules ordered canceled, and proceeding discontinued, without prejudice to the filing of new schedules in conformity with the conclusions.

Frank W. Gwathmey, James A. Bistline, W. A. Northcutt, M. G. Roberts, Charles Clark, and Chas. P. Reynolds for respondents.

D. S. Browder for Pennsylvania Dixie Cement Corporation, in behalf of respondents.

Wilbur C. King, Jerry W. Carter, Richard A. Mack, Lewis W. Petteway, Fred McMullen, and Fred Pettijohn for Florida Railroad and Public Utilities Commission and representing the Attorney General of the State of Florida, protestants.

F. C. Hillyer, Thomas E. Grady, T. C. Maurer, B. H. Overton, H. L. Lawton, R. Y. Patterson, Otis A. Jones, Cecil Jones, G. R. Gordon, M. D. Malmend, W. H. Backer, Gordon Stedman, M. W. Wells, R. J. Healy, Wilbur LaRoe, Jr., Frederick E. Brown, Arthur L. Winn, Jr., Samuel H. Moerman, J. R. Stanfield, A. M. Ribe, F. E. Harrison, Jr., and W. W. Balkcom for numerous shippers, protestants.

REPORT OF THE COMMISSION

PATTERSON, Commissioner:

Exceptions to the report proposed by the examiner were filed by protestants, and the issues were orally argued. Our conclusions differ from those recommended in the proposed report. Exceptions and requested findings not discussed in this report nor reflected in our findings or conclusions have been considered and found not justified. We [fol. 122] shall discuss, first, the evidence of record in No 30140, and second, the evidence of record in I. & S. No. 5646.

No. 30140

Issues.—This proceeding is an investigation under section 13 of the Interstate Commerce Act concerning the law-

fulness of Florida intrastate freight rates and charges.[2] Responsive to a petition, as amended, filed by the principal railroads serving Florida, we entered upon this investigation for the purpose of determining whether the rates and charges of the common carriers by railroad operating in Florida, or any of them, for the intrastate transportation of property, made or imposed by authority of the State of Florida, cause any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce, on the one hand, and interstate or foreign commerce, on the other hand, or any undue, unreasonable, or unjust discrimination against interstate or foreign commerce, and, if so, what rates and charges, or what maximum or minimum, or maximum and minimum, rates and charges shall be prescribed to remove any unlawfulness found to exist.

All carriers by railroad operating in Florida which are subject to our jurisdiction were made respondents.[3] Copies of the order of investigation and notice of hearing were served upon each of them and upon the State of Florida.

[fol. 123] Proposed increases.—The increases proposed by respondents herein differ considerably from those under consideration in *Increases in Alabama Freight Rates and Charges, 274 I.C.C. 439.* We shall discuss the evidence herein more or less following the sequence of subjects used in that proceeding, but treating some evidence in more technical detail and some subjects at greater length. It will not be necessary to discuss the various factual similarities and differences that exist in the two proceedings. Each situation presented herein will be dealt with on its own merits.

In *Increased Railway Rates, Fares, and Charges, 1946,*

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[2] Except as noted, rates and charges will be stated herein in amounts per 100 pounds. They do not include general increases authorized subsequent to Ex Parte No. 166, and as such, will be referred to as the present rates.

[3] The principal respondents include the Atlantic Coast Line Railroad Company, Seaboard Air Line Railway Company, and Florida East Coast Railway Company (Scott M. Loftin and John W. Martin, Trustees). These carriers will be referred to by their short titles.

266 I.C.C. 537, decided December 5, 1946, referred to herein as Ex Parte No. 162, we authorized general increases in the interstate freight rates and charges, with few exceptions, of carriers subject to Part I of the act, *of 25 percent in official territory, 20 percent in and between other territories, and 22½ percent between official and other territories*, subject to certain maximum amounts on particular commodities and to specified flat increases on others. The rates as thus increased effective January 1, 1947, were found to be just and reasonable. *On class rates*, this authorization subsequently *was modified so as to authorize a uniform increase of 22½ percent in all class rates, not including rates based on classification exception ratings*, affected by the decision in *Class Rate Investigation, 1939, 262 I.C.C. 447, 264 I.C.C. 41, 268 I.C.C. 577, referred to as No. 28300*, or the class rate investigation. The interstate rates as thus revised became effective August 22, 1947.

In a report of June 20, 1946, in Ex Parte No. 162 and a companion proceeding, *264 I.C.C. 695*, we had authorized certain interim increases in interstate rates and charges, generally 6 percent in southern territory, which became ef- [fol. 124] fective July 1, 1946. Following this authorization, respondents sought authority from the Florida Railroad and Public Utilities Commission to make corresponding increases on intrastate traffic. This request was granted and the intrastate increases were established on July 1, 1946, the same day the interstate interim increases became effective.

On December 7, 1946, respondents filed with the Florida commission a further request, directing attention to their previous petition of May 2, 1946, seeking additional increases in the intrastate rates and charges corresponding in all respects to those approved in the Ex Parte No. 162 report of December 5, 1946. On March 11, 1947, such authority was granted by that Commission, *except that no increase was granted on (a) logs moving to the mills, (b) wet phosphate rock moving from washer to drying plant, (c) wastewoods such as stumps, knots, and limbs moving to retorts or recovery plants, and (d) sugar cane moving to the mills. A further exception was that on pulpwood an increase of 9 percent on the so-called Ex Parte 123 rates should apply.* On May 9, 1947, however, that Commission

permitted an increase of *20 percent in rates on pulpwood between points on the Atlanta & Saint Andrews Bay Railway Company.* All of the intrastate increases were established March 16, 1947, except those on road aggregates which became effective on June 16, 1947.

Subsequently, in *Increased Freight Rates, 1947, 270 I.C.C. 403, decided July 27, 1948*, and referred to as Ex Parte No. 166, we authorized interstate increases of 30 percent in official territory, *25 percent in southern territory and in* western trunk-line zone I, 20 per cent in the remainder of western territory, *25 percent between southern and western* territories and between those territories, on the one hand, and official territory on the other, and 22½ percent between western territory other than western trunk-line zone I, and [fol. 125] the latter zone, subject to maximum amounts on particular commodities and to flat increases on others. These increases became effective August 21, 1948. In the meantime certain interim increases authorized in Ex Parte No. 166, on October 6 and December 29, 1947, and April 13, 1948, had become effective on interstate traffic on October 13, 1947, January 5, 1948, and May 6, 1948, respectively, which interim increases were superseded by the above-described general increases.

On October 8, 1947, and January 2, April 23, and August 3, 1948, respondents filed petitions with the Florida commission seeking increases in the intrastate rates and charges corresponding in all respects with those approved in Ex Parte No. 166. Respondents further sought modification of the Florida commission's order of March 11, 1947, so as to authorize the Ex Parte 162 increases on the commodities excepted from those increases by that order.

The report of December 29, 1947, in Ex Parte 166, *270 I.C.C. 81, had authorized an interim increase of 20 percent* on interstate traffic in the South, with certain exceptions. On April 9, 1948, the Florida commission authorized corresponding interim increases on intrastate traffic with the following exceptions. *No increase was authorized on (a) wastewood, stumps, limbs, etc., moving to Pensacola, Fla.; (b) sugar cane from the fields to the mill, (c) fertilizer and fertilizer materials, and (d) dolomite or ground agricultural limestone. On road aggregates the authorized intrastate increase was 10 percent, maximum 30 cents per net ton,*

instead of the increase sought, namely 20 percent, maximum 30 cents per net ton. On intrastate class rates, and rates made in relation thereto, the increase authorized was *10¼ percent instead of 20 percent as sought*. By its order of November 13, 1948, entered after the final report in Ex Parte [fol. 126] No. 166, the Florida commission (a) denied a general increase of 25 percent in lieu of the 20 percent increase authorized by it on April 9, 1948; (b) denied the Ex Parte 162 increase on commodities excepted in its order of March 11, 1947; (c) extended the expiration date of the interim increases authorized by it on April 9, 1948; (d) continued all exceptions provided in the order of April 9, 1948; (e) revised the intrastate class-rate scales so as to reflect the interim interstate scales as increased 20 percent under the report of December 29, 1947, in Ex Parte 166, but not as subsequently increased in the final report in Ex Parte 166; (f) removed the increase authorized on April 9, 1948, on phosphatic sand and clay; and (g) considered sulphur a fertilizer or fertilizer material on which no increase was authorized on April 9, 1948.

At the hearing herein, and subsequently, *respondents requested that rates on sand, gravel, crushed stone, etc., commonly called road aggregates, be considered as withdrawn from this investigation, also rates on fertilizer and fertilizer materials between points on the Florida East Coast Railway, and, if interstate and intrastate tariffs which have been filed become effective, rates on petroleum and its products and sulphuric acid in tank-car loads, and canned goods and composition roofing or building materials, in carloads.* With the foregoing exceptions, respondents are here seeking increases in Florida intrastate rates and charges corresponding to those authorized in Ex Parte 162 and 166.

Subsequent to the increases approved in Ex Parte 162 and 166, increases in interstate rates and charges were authorized in *Increased Freight Rates, 1948, 276 I.C.C. 9, decided August 2, 1949*, and referred to as Ex Parte No. 168. Respondents' petition and the evidence of record deal solely [fol. 127] with rates and charges prior to the Ex Parte 168 increases. Our findings, therefore, will be limited accordingly.

As previously indicated, substantial portions of the Ex Parte 162 and 166 increases have not been made effective

on Florida intrastate traffic. Except as previously noted, respondents seek the remainder of the Ex Parte 162 and 166 increases. They estimate that the annual revenue thus lost *to them on Florida intrastate traffic approximates $915,325.* From 16.6 to 28.1 percent of the revenue received by the principal respondents, respectively, for transporting freight in Florida is derived from intrastate traffic.

Class rates.—Prior to *Southern Class Rate Investigation, 100 I.C.C. 513,* and supplemental reports, referred to as No. 13494, many inconsistencies were reflected in the class rates throughout southern territory. In that investigation, transportation conditions were found to warrant the establishment of a uniform basis of maximum reasonable class rates for all so-called standard railroads throughout the South, except between points in Virginia and points in North Carolina and except to and from points in the Florida peninsula.[4] Through cooperation between the various State regulatory bodies and this Commission, rates on the uniform basis prescribed in that proceeding were established for both interstate and intrastate application throughout the southern States, effective *in general on January 15, 1928.* Thereafter, except in the States of Georgia and Alabama for a portion of this period, and except for certain reductions required by us in the so-called border areas, generally for distances up to 190 miles, which reductions were later voluntarily extended by respondents to Florida interstate and intrastate traffic, a uniform adjustment was maintained on [fol. 128] class-rate traffic on railroads throughout the South.

In authorizing the southern class-rate adjustment with arbitraries for the haul in the Florida peninsula, the Florida commission excepted a few commodities as to which the old system of intrastate class rates are still applicable. On October 18, 1935, for competitive reasons, respondents generally waived the peninsular intrastate arbitraries on articles rated 7th class or higher. Following this action, the intrastate rates involved reflected a differential under the interstate rates. The No. 13494 class rates were increased 20 percent under Ex Parte No. 162. However, in making the

[4] South of the Seaboard from Jacksonville to Chattahoochee (formerly River Junction), Fla.

No. 28300 reduction of 10 percent, and increasing that basis 22.5 percent under Ex Parte No. 162, effective August 22, 1947, on articles moving under classification ratings and not including exceptions, respondents used the normal rates for interstate and intrastate traffic without such waiver of arbitraries. The Florida commission had granted the full increase comparable to the increases in Ex Parte No. 162. Respondents' action was in harmony with our ruling previously made in No. 28300 in connection with certain other subnormal and depressed class rates *(264 I.C.C., 41, 47, et seq.)*.

On January 5, 1948, in making the Ex Parte 166 interim increase of 20 percent on interstate traffic, respondents used the No. 13494 basis, subject as maximum to the No. 28300 basis without waiver of arbitraries. The Florida commission on April 9, 1948, authorized class rate increases of 10¼ percent in connection with both the No. 13494 and No. 28300 rates, which increases were established on April 28, 1948. On May 6, 1948, the 25 percent general increase superseded the 20 percent increase on interstate traffic. Thereafter, in lieu of the increases authorized on April 9, 1948, the Florida commission on November 13, 1948, authorized a 20 percent [fol. 129] increase in No. 13494 rates and prescribed a new scale of rates in lieu of the No. 28300 basis. The latter scale reflected a 22½ percent increase under Ex Parte 162 and a 20 percent increase under Ex Parte 166. By this action, respondents apparently were forced, in effect, to again waive the peninsular intrastate arbitraries on articles moving under classification ratings 7th class (or column 35 R or V) or higher. The foregoing authorized increases in intrastate rates became effective December 7, 1948. Thus, the substantial differences here complained of between the interstate rates as increased under Ex Parte 166 and the Florida intrastate rates resulted.

Respondents, in effect, propose herein to again restore the arbitraries as above described. For example, on traffic governed by classification ratings under No. 28300 from Thomasville, Ga., to St. Petersburg, 282 miles, the first class interstate rate of $1.70, effective August 22, 1947, was increased to $2.13 on December 7, 1948, and would not be affected by respondents' proposal; whereas from Tallahassee, Fla., to St. Petersburg, 281 miles, the first class

intrastate rate of $1.61 on August 22, 1947, was increased to $1.752 on December 7, 1948, and would become $2.01 under respondents' proposal. Under this proposal, the intrastate rate still would be on a lower level than the corresponding interstate rate.

On the No. 13494 intrastate class rates, governed by exceptions, respondents apparently had made no attempt to restore the intrastate arbitraries on the higher classes, which arbitraries had been waived on October 18, 1935. [fol. 130] Under respondents' proposal herein, such intrastate rates will still reflect a differential under the interstate rates for like distances and comparable hauls in the Florida peninsula. On the other hand, on the lower classes, both under No. 28300 and No. 13494, the peninsular arbitraries, both State and interstate, never have been waived.

Of course, no peninsular arbitraries have applied in the Southeast generally or in portions of Florida other than the peninsula. Thus, interstate and intrastate rates which are subject to the arbitraries naturally are higher than corresponding interstate and intrastate rates which are not subject thereto.

Due to the various revisions referred to, the difference in interstate and intrastate rate increases, here complained of, vary depending upon (a) the portion of the State where the movement takes place, (b) whether the traffic moves under the classification proper or under exceptions, (c) whether the peninsular arbitraries have been waived on the particular traffic, and (d) the length of the intrastate haul in the peninsula as compared with an interstate movement as to which only a portion of the haul is in the peninsula. The postwar percentage increases have increased the peninsular arbitraries in cents per 100 pounds.

Less carload traffic generally moves at the class rates. An analysis of a cost study of less-than-carload traffic in the original report in No. 28300, revealed the fact that less-than-carload traffic generally in all the territories was not bearing its proper share of the costs of transportation. In fact, excluding wartime loading, it was not yielding, on the average, its out-of-pocket costs plus constant expenses solely related to this traffic, plus the cost of collection and delivery, in any territory except possibly in the southern where the

[fol. 131] margin of difference between revenues and these expenses was slight.

In numerous instances less carload shipments were made from both interstate and intrastate origins to the same Florida destinations. There were 155 Florida destinations in this category. Some 80 specified commodities moved from both intrastate and interstate origins to Florida destinations. Based upon a traffic study made by respondents of less carload shipments terminated on their lines in Florida for a period of 1 week in October 1948, they estimated their annual revenue loss by reason of the relatively lower Florida intrastate rates as applied on such shipments at $43,588. These and similar estimates are based upon the assumption that no important changes will result in the traffic volume as it existed in the test period.

Commodity rates.—Respondents submitted statements in considerable detail showing the consist of interstate and State shipments handled by them in Florida. Shipments in numerous instances were made from both intrastate and interstate origins to the same Florida destination. In that category, the more important commodities are baskets and hampers, brick, cement, crate material, fertilizer and fertilizer materials, lime, logs, lumber, plaster, poles, pulpwood, tin cans, and wastewood. In numerous proceedings we have prescribed or approved reasonable interstate rates on these and a large number of other commodities which move from, to, or between points in Florida. The commodities which will be dealt with separately move in substantial volume at commodity rates from, to, or between points in Florida, both intrastate and interstate.

Agricultural limestone.—On interstate shipments of agricultural limestone, in closed equipment, to Florida destinations, the arbitraries per net ton added for representative [fol. 132] distances in the peninsula are 22 cents for 30 miles, 44 cents for 100 miles, 66 cents for 200 miles, and 83 cents for 300 miles. The arbitraries, as such, are not added to the State rates. For distances ranging from 230 to 600 miles, however, the north Florida scale is lower than the south Florida scale by amounts ranging from 22 to 61 cents. The interstate arbitraries for those distances range from 77 to 94 cents. The State rates were increased in amounts

corresponding to the Ex Parte 162 increases, but no increases were permitted corresponding to those authorized in Ex Parte 166. Present intrastate rates per net ton between Florida points, as compared with the interstate basis proposed herein, follow: From Crystal River to Clearwater, 97 miles, $1.375 versus $1.55; Lebanon to Cocoa-Rockledge, 216 miles, $1.84 versus $2.30; Dolomite to Fort Lauderdale, 263 miles, $2.222 versus $2.32; and Dolomite to Winter Haven, 85 miles, $1.375 versus $1.55. Competing interstate shipments to Florida destinations, including Miami and Winter Haven, were made from points in Tennessee, Missouri, Alabama, and Georgia at rates as high as $6.49 per net ton. Diversions from rails to trucks by two Florida producers, however, have increased to 15 and 30 percent, respectively. Protestants are of the opinion that increased rates would probably curtail the use of this limestone as a fertilizer or as an ingredient in commercial fertilizer. *This opinion appears purely conjectural*, however, when consideration is given to the long interstate hauls mentioned. Making due allowance for the interstate arbitraries, the proposed increased intrastate rates would not exceed the interstate basis of rates from interstate points to destinations in the Florida peninsula.

Fertilizer and fertilizer materials.—Great quantities of fertilizer are essential to the production of vegetables and fruit in Florida, which State uses from 2 to 8 times as much [fol. 133] fertilizer per crop acre as nine other specified southern States. Maximum reasonable distance rates for general application on fertilizer and fertilizer materials between points in the South with a minimum of 40,000 pounds were prescribed in *Fertilizers Between Southern Points*, 113 I.C.C. 389. This scale generally was established on both interstate and intrastate traffic in the South and contains no arbitraries for the Florida peninsula. Except for two substantial reductions in the rates for distances up to 300 and 280 miles, respectively, generally made to meet truck competition and graded to meet the original scale at 390 miles, these distance rates, as modified by subsequent general increases, are still applicable to interstate traffic. On intrastate traffic, however, by reason of the greater rate increase on interstate traffic than on Florida intrastate traffic, the

rate differences generally range from 15 cents to $1.61 per ton for corresponding minimum weights and distances.

On fertilizer materials moving intrastate, 75 percent of column M rates, minimum 40,000 pounds, with higher rates for joint-line hauls, alternate with so-called distance scales A, B, and D, which scales apply on fertilizer and fertilizer materials, minima 60,000, 40,000 and 40,000 pounds, respectively. Generally speaking, scale A applies in northern Florida, scale B applies in peninsular Florida, excepting generally where scale D applies, and scale D applies generally in southeast Florida, including certain joint hauls in connection with the East coast, and at stations in the vicinity of Lake Okeechobee. Representative rates above described, local rates on the East coast, and comparable interstate rates, minimum 60,000 pounds, appear in the following table, wherein the present rates are stated in cents per net ton. The interstate rates, minimum 60,000 pounds, alternate with certain higher interstate rates, [fol. 134] minimum 40,000 pounds, applicable to and from southern Florida. Rates under the headings Scale D and East coast reflect 75 cents per ton allowance made to consignee under tariff provisions.

Distance Miles	75% Basis Cents	Scale A Cents	Scale B Cents	Scale D Cents	East coast Cents	Interstate Cents
50	208*	102	102	143*	123	128
100	257*	162	162	223*	195	203
150	290*	222	222	289*	255	278
170	313*	246	246	315*	279	308
200	313	282	282	347	309	353
300	324	414	414	447	399	518
400	346	552	564	532	477	690**
480	380	600	660	585	525	750

* Higher than the interstate rates.

** Interstate rate to and from southern Florida is 705 cents.

In many instances, the carriers' proposed intrastate rates would exceed the interstate basis particularly the proposed scale D rates for distances from 25 to 360 miles. The proposed scale D rates, of course, are even higher than the present rates shown in the table. On the other hand, specific examples show the movement of fertilizer and fertilizer materials from intrastate and numerous interstate points of origin frequently to the same destination in Florida and the respective rate adjustments, indicating

the disadvantage to interstate points caused by these differences in rate levels. Despite the general increases, the Coast Line's system tonnage and revenue on fertilizers and fertilizer materials increased 5.35 and 15.23 percent, respectively, for the first three months, 1949 versus 1948.

Sulphur was listed under fertilizer and fertilizer materials in the Florida intrastate tariffs at rates considerably lower than the interstate rates on sulphur for corresponding distances, especially if the interstate rates were subject to the Florida peninsular arbitraries on hauls partly in the peninsula.

[fol. 135] The present interstate scale in the South is lower for all distances than the scale prescribed in *Eastern Fertilizer Cases*, 198 I.C.C. 483, 203 I.C.C. 787, on basis of 22.5 percent of first class between points in trunk-line territory; and the southern scale is lower for distances of 600 miles and less than the scale prescribed in the report on further hearing in *Ohio Farm Bureau Federation* v. *Ahnapee & W. Ry. Co.*, 146 I.C.C. 419, for application between points in central territory. However, for some (not all) distances greater than 680 miles up to 800 miles, the maximum distance under the latter scale, that scale is slightly lower than the southern scale. For distances of 300 miles and less, the southern scale is much lower than either the central-territory scale or the trunk-line scale. The trunk-line and central territory scales are subject to a minimum of 40,000 pounds, while the southern scale is subject to a minimum of 60,000 pounds.

As previously stated herein, respondents are not seeking increases in Florida intrastate single-line rates on fertilizer and fertilizer materials between points on the Florida East Coast Railway. That carrier felt that a further increase in its rates would cause a diversion of this traffic from its rails. The increases sought in other rates are 25 percent, maximum $1.60 a ton, corresponding to those authorized in Ex Parte 166. Our findings herein do not contemplate the establishment of any single-line intrastate rates on a basis higher than the level of the corresponding rates maintained by the Florida East Coast Railway.

Logs.—In lieu of (1) no increase corresponding to the Ex Parte 162 interstate increases and (2) the 20 percent

increase partially corresponding to the 25 percent Ex Parte 166 interstate increases, as authorized by the Florida commission, respondents seek on intrastate traffic increases [fol. 136] corresponding to the full amount of the interstate increases authorized in Ex Parte 162 and Ex Parte 166.

Generally speaking, on the Coast Line, the Florida intrastate rates on logs, except cedar, range from 0.7 cent to 13.9 cents lower than the present equivalent of the distance rates approved as reasonable for application on interstate log traffic between numerous points in southern territory in *Farris Hardwood Lbr. Co.* v. *Louisville & N. R. Co.*, 178 I.C.C. 671. The net transit intrastate rates maintained by the Coast Line and the Seaboard, and the trainload rates of the Coast Line, are even lower than the corresponding intrastate distance scales of local rates.

The record shows a heavy movement of logs from Bainbridge, Ogletlorpe, and Quitman, Ga., respectively, to Jasper, Fla., 136, 147, and 48 miles, at rates of 11.5, 18, and 9 cents; also a heavy movement from Perry and Trenton, Fla., respectively, to Jasper, 60 and 74 miles, at intrastate rates of 40.2 cents and per car rates equivalent to approximately 5.4 cents. The intrastate rates proposed from Perry and Trenton are 11 cents and the equivalent of about 6.7 cents, respectively.

One shipper, in order to reduce transportation costs, has moved his plant from Jacksonville to the woods in West Florida. A few other shippers receive more logs by truck than by rail. The trucking of lumber appears to be more prevalent than the trucking of logs, however. Another large shipper has his own logging road. Respondents, of course, cannot meet all of these situations, but, in an effort to do so, the Coast Line has established very low intrastate trainload rates from and to specified points, hereinafter described.

In *Farris Hardwood Lbr. Co.* v. *Louisville & N. R. Co.*, *supra*, we prescribed reasonable single-line and joint-line distance scales of rates on logs, in carloads, from points in [fol. 137] southern territory, not including points in Florida south of the line of the Seaboard Air Line Railway Company from Jacksonville to River Junction, to certain points in Tennessee for distances to and including 800 miles. The

prescribed single-line rates were 2.5 cents per 100 pounds lower than the corresponding joint-line rates. The proceeding was comprehensive in its scope and resulted in a general readjustment of rates over an extensive territory. The rates under the joint-line scale therein prescribed, as modified by the subsequent general increases, are in most instances the same as the official territory rates for like distances and, in other instances, are either 1 cent higher or lower than such rates.

The distance-scale basis prescribed in *Farris Hardwood Lbr. Co.* v. *Louisville & N. R. Co., supra,* was subsequently prescribed in a number of other proceedings for application between points in other sections of southern territory, and to points in that territory from origins in official territory. See *Pulaski Veneer Corp.* v. *Atlantic & Y. Ry. Co.,* 258 I. C. C. 706, and 259 I. C. C. 313, and the decisions therein cited.

The following table is representative and shows (1) Coast Line local Florida intrastate rates, minimum 40,000 pounds, on certain logs over 6 feet in length; (2) so-called Florida P-1 maximum rates on logs generally, minimum 30,000 pounds; (3) Coast Line net transit intrastate rates, which are lower than the local rates; (4) normal local interstate rates maintained by the Coast Line, Seaboard, and Southern Railway Company on certain logs, minimum 40,000 pounds, which are higher than the interstate net transit rates; (5) interstate rates on the basis of *Farris Hardwood Lbr. Co.* v. *Louisville & N. R. Co., supra,* minimum 40,000 pounds.

[fol. 138]

Distance Miles	Local Intrastate Cents	P–1 Intrastate Cents	Net transit Intrastate Cents	Normal Interstate Cents	Farris Scale Cents
50	5.7	5.46	3.3	7.5	9
80	7.2	6.72	4.5	9	11.5
100	7.8	7.56	4.5	10	12.5
150	9.6	9.24	5.7	12.5	15
170	10.2	10.5	6.3	14	16

The interstate net transit rates are higher than the corresponding intrastate net transit rates. The Coast Line maintains much lower intrastate rates on certain logs, in trainloads between specified points. The trainload rates apply per carload regardless of weight and decrease in a

graduated scale according to the number of trainloads of 28 cars or more shipped per calendar month. In one instance, the trainload rate proposed herein would yield $20.25 per car of 60,000 pounds as compared with $45 under the normal interstate scale. Respondents are not seeking increases to the interstate bases, but merely increases corresponding with the full amounts of the interstate increases authorized in Ex Parte 162 and Ex Parte 166.

Lumber.—In lieu of the 20 percent increase on lumber authorized by the Florida commission, respondents seek no more than the full amount of the 25 percent increase authorized in Ex Parte 166 and now applicable to interstate traffic. For distances from 10 to 700 miles, the Florida intrastate rates on lumber range from 0.8 cent to 14 cents lower than the present equivalent of the distance rates approved as reasonable for application on lumber between numerous points in southern territory in *Adams-Bank Lbr. Co.* v. *Aberdeen & R. R. Co.*, 157 I. C. C. 280. Rates on lumber substantially higher than those in effect in Florida also were prescribed as reasonable for the South in other proceedings including *Johnson-Battle Lbr. Co.* v. *Seaboard Air Line Ry. Co.*, 198 I. C. C. 796, and *Georgia Veneer & Pack-*
[fol. 139] *age Co.* v. *A. C. L. R. Co.*, 206 I. C. C. 566.

Destinations in Florida receiving lumber from competing intrastate and interstate origins include Apoka, Auburndale, Barton, Belleglade-Chosen, Bradenton, Chattahoochee, Clearwater, Clermont, Cocoa-Rockledge, Coconut Grove, and numerous other destinations. From Blountstown and Chipley, Fla., to Coconut Grove, 569 and 552 miles, for example, the present intrastate rate is 34.8 cents and the rate proposed by respondents herein is 36 cents, as compared with an interstate rate of 45 cents from Macon, Ga., to Fort Lauderdale, Fla., 569 miles. From Archer, Fla., to Coconut Grove, 342 miles, the intrastate rate is 24 cents and the proposed rate is 25 cents, as compared with interstate rates of 31 cents from Roanoke, Ala., to Gainesville, Fla., 347 miles, and 33 cents from Cordele, Ga., to Cocoa-Rockledge, Fla., 357 miles. From Tallahassee, Fla., to Jacksonville, 166 miles, the intrastate rate is 15.6 cents and the proposed rate is 16 cents, as compared with the interstate rate of 20 cents from Milan, Ga., to Jacksonville, 167 miles.

A substantial amount of lumber is now being handled by truck. Nevertheless, the record shows substantial movements, during the test periods for four weeks, at interstate rates which have received the general increases and are upon a substantially higher level than the intrastate level of rates proposed herein.

* * * In *Lumber Between Points in Official Territory*, 214 I. C. C. 493, division 2 said at page 520:

* * * * * * *

> The scale prescribed in *Adams-Bank Lbr. Co.* v. *Aberdeen & R. R. Co.*, 157 I. C. C. 280, is a standard by which rates on lumber in the South are measured. It was prescribed for application between North Carolina and South Carolina, and also with respect to rates from the Mississippi Valley to the Carolinas. That scale is generally from 2 to 4 cents lower than the official-territory [fol. 140] sixth-class scale. The Adams-Bank Scale has been recognized by the Commission as a standard of reasonableness in numerous cases involving rates on lumber and forest products within the South. *Georgia Veneer & Package Co.* v. *A. C. L. R. Co.*, 206 I. C. C. 566, and cases cited therein.

The following table shows representative rates (1) intrastate within Florida with minima of 34,000 and 24,000 pounds, respectively, (2) interstate in the South generally in effect under the so-called compromise scale, minimum generally 34,000 pounds, and (3) interstate joint-line and single-line rates, minimum generally 34,000 pounds, upon the basis prescribed in *Adams-Bank Lbr. Co.* v. *Aberdeen & R. R. Co., supra.*

	Florida		Compromise	Adams-Bank	
Distance Miles	34,000 lbs. Cents	24,000 lbs. Cents	Scale Cents	Single Cents	Joint Cents
50	9.6	12	10.5	14	18
100	11.4	15.6	14	18	20
200	16.8	20.4	21	25	25
300	21.6	27.6	29	33	33
400	26.4	33.6	36	39	39
500	31.2	38.4	43	44	44

The compromise scale on lumber in the South is lower than the scale in official territory except that for a few of

the longer distances the rates under the two scales are the same.

There are numerous intrastate truck competitive rates within Florida, particularly to Jacksonville. Protestants refer to numerous interstate truck competitive rates in the South which are lower than the so-called compromise scale, but such rates apply to comparatively few points in Florida, principally to Jacksonville. The interstate truck competitive rates to Florida destinations, and certain interstate rates to Florida ports, are an exception and do not represent the interstate basis generally in effect to and from Florida.

Respondents estimated that the increases proposed on lumber, box and crate material, and cross ties, would pro- [fol. 141] duce an additional amount of $56,509 annually.

Phosphate Rock.—The Florida intrastate rates on dry phosphate rock, other than ground, for distances of 139 miles and less, range from 27 to 106 cents lower than the present equivalent of 75 percent of the scale of rates on fertilizer and fertilizer materials authorized by us in *Fertilizer Between Southern Points, supra.* The interstate rates on phosphate rock generally are on the 75 percent basis except where lower rates are necessary on account of water competition. That basis was approved on shipments from Florida to certain destinations in Alabama, Georgia, South Carolina, and Tennessee in *International Minerals & Chemical Corp.* v. *A. C. L. R. Co.*, 269 I. C. C. 611, in which report reference was made to similar findings in *Missouri Chemical Co.* v. *Atlantic Coast Line R. Co.*, 268 I. C. C. 94, *Armour and Co.* v. *Aberdeen & R. R. Co.*, 268 I. C. C. 502, and *Diamond Fertilizer Co.* v. *Aberdeen & R. R. Co.*, 256 I. C. C. 747 and 259 I. C. C. 75. For distances over 139 miles, respondents have published specific intrastate commodity rates to Florida points to which there is a substantial movement, which rates do not exceed the interstate level.

The net transit rates on wet phosphate rock from the Florida mines or washers to nearby drying plants are 13.2 cents per ton of 2,240 pounds on intrastate traffic as compared with 16 cents on interstate traffic, yielding $6.48 and $7.86 per average car, respectively. Both of these charges

are lower than net transit rates on various other commodities and lower than various charges for intra-plant, intra-terminal and inter-terminal crosstown switching at points in Florida.

Pulpwood.—On pulpwood, respondents seek an increase of 20 percent, maximum 8 cents, corresponding to the increases in Ex Parte 162, instead of the increase of 9 percent [fol. 142] authorized by the Florida authorities. The increase sought corresponding to the Ex Parte 166 increase is 25 percent, instead of 20 percent as authorized on Florida intrastate traffic. Florida destinations receiving a heavy volume of pulpwood from competing intrastate and interstate points include Fernandina, Jacksonville, North Pensacola, Pensacola, and Port St. Joe. The maximum movement from interstate or intrastate origins to the same Florida destinations during the test period apparently was 288 miles. Due to the short hauls, and certain physical and rate advantages, an increasing amount of tonnage has been diverted from rails to truck. Respondents, however, are confronted with practically the same short-haul situation with respect to both interstate and intrastate truck competition. There is a heavy movement to Florida at interstate rates which have been increased under Ex Parte 162 and Ex Parte 166.

From Umatilla to Fernandina, 189 miles, the intrastate rate per unit of 168 cubic feet is $5.346 and the rate proposed is $6.125, as compared with the interstate rate of $4.59 from Collins, Ga., to Fernandina, 186 miles. From Colfax to Fernandina, 91 miles, the intrastate rate is $4.254 and the rate proposed is $4.875, as compared with the interstate rate of $3.35 from Riceboro, Ga., to Fernandina, 94 miles. In these particular instances, the interstate rates are on a lower basis than the proposed intrastate rates.

In *Pulpwood, North Carolina and Virginia to Cypress, Va.*, 235 I. C. C. 11, at page 13, division 3 stated:

> The Roanoke Rapids scale, established by the Seaboard Air Line into Roanoke Rapids, N. C., in 1909, is a depressed basis and is maintained by the southern carriers for single-line application on pulpwood from origins on their lines to southern consuming points. It is essentially a transit scale, put into effect on the

tacit understanding that a carrier transporting pulpwood to a mill shall be given the outbound products manufactured therefrom for transportation to the markets.

[fol. 143] The Roanoke Rapids scale is substantially lower than the scale applicable in eastern territory. The following table is representative and shows (1) Florida intrastate rates under the 1/10 of class P basis; (2) intrastate rates under the Roanoke Rapids basis with increases allowed in Florida; and (3) interstate rates under the Roanoke Rapids basis which rates are proposed herein for intrastate application. These rates are on basis of units of 160 cubic feet.

Distance Miles	1/10 of Class P	Intrastate scale Roanoke Rapids	Interstate scale Roanoke Rapids
50	$2.34	$2.03	$2.33
100	3.24	2.78	3.20
150	3.96	3.29	3.76
200	4.39	4.04	4.64
300	5.30	5.35	6.14
400	....	6.66	7.64

The Florida intrastate rates on pulpwood generally were based on the Roanoke Rapids scale. They now range from 18 to 99 cents lower, per unit of 160 cubic feet, than the present equivalent of that scale on interstate traffic. The foregoing intrastate rates on pulpwood are relatively lower than rates on such low grade commodities as sand, gravel, and crushed stone adopted as a compromise between shippers and carriers throughout the South.

Many of the Florida intrastate rates, however, were not based on the Roanoke Rapids scale, but, instead, were on the 1/10 of Class P basis which was higher for most single-line hauls particularly those under 210 miles and considerably higher for two-line and three-line application. Respondents made no real effort to justify increases on pulpwood moving under the higher intrastate scales and there is no warrant upon this record for any increases in intrastate rates which would cause those rates to exceed the [fol. 144] Roanoke Rapids scale increased 20 percent, maximum 8 cents per 100 pounds, corresponding to the Ex

Parte 162 increase, and 25 percent, without maximum, corresponding to the Ex Parte 166 increase.

Resinous Wastewood.—Resinous wastewood consists of old pine stumps, knots, butts, limbs, and boughs from which naval stores are produced by a steam distillation process. It requires 5 tons or more of this wood to produce a ton of naval stores. No increases in intrastate rates were authorized corresponding to the 20 percent Ex Parte 162 increases. Increases corresponding to the 25 percent Ex Parte 166 increases were limited to 20 percent, with the exception that no increase following Ex Parte 166 was authorized on intrastate movements to Pensacola, Fla. Increases corresponding to those in Ex Parte 162 and 166 were allowed by the State authorities of Georgia, Mississippi, North Carolina, South Carolina, and Tennessee.

A large volume of this wood moves in interstate commerce to Florida points. For example, during the second week in each quarter of 1948, Brewton, Florala, and Wallace, Ala., each shipped nearly 2 million pounds of wastewood to Pensacola. The interstate rate of 5.75 cents from Brewton and Wallace to Pensacola, 57 and 43 miles, respectively, is compared with the present intrastate rate of 3.25 cents, and the rate sought herein of 5 cents, from Gallivers, Fla., to Pensacola, 50 miles. The interstate rate of 7 cents from Florala to Pensacola, 77 miles, is compared with the present intrastate rate of 7 cents, and the rate sought of 10.75 cents for the much longer haul from Youngstown, Fla., to Pensacola, 157 miles.

Group rates apply from certain stations in Alabama and Florida to Pensacola. At the group boundary are Pine, Fla., and Atmore, Ala., only 7 miles apart. The interstate rate from Atmore is 93 cents as compared with the intrastate rates from Pine of 50 cents now applicable and 75 [fol. 145] cents sought. On the average, the difference in distance from the two groups is about 38 miles. The rate differential was 12 cents on June 30, 1946, as compared with 43 cents at present and 18 cents at the basis sought herein. According to protestant, the largest single interstate movement to or from Florida is that from northeastern and north central Florida to Brunswick, Ga. There is also a heavy intrastate movement within Georgia.

The interstate rates to Pensacola compare favorably with the present equivalent of rates from Coast Line stations in Georgia to Jacksonville, approved in *Waste Resinous Wood*, 77 I. C. C. 448. Rates lower than that basis, however, now apply from certain points in southern Georgia to Jacksonville based on the so-called Georgia single line scale for a minimum of 40,000 pounds. Under that scale, the rates for 50 miles and 167 miles are 5.75 and 7 cents, respectively, as compared with the foregoing Florida intrastate applicable rates of 3.25 and 7 cents and rates sought of 5 and 10.75 cents, respectively. The rates from these southern Georgia points to Jacksonville, however, are on a lower basis than, and therefore are not representative of, the basis generally maintained on interstate traffic to and from Florida. The lowest basis generally maintained on interstate traffic to and from Florida is that, hereinafter described, from northeastern and north central Florida to Brunswick.

For distances from 30 to 260 miles, for example, single-line distance scales, minimum 40,000 pounds, generally applicable in Florida as well as two scales, minima 40,000 and 60,000 pounds, applicable from Florida points to Gainesville, Fla., as increased according to the Ex Parte 162 and Ex Parte 166 increases, generally would yield lower per car charges, based on minimum weights, than such charges under the interstate scale, minimum 60,000 pounds, from Coast Line origins in Florida to Brunswick, as likewise increased. As previously indicated, there is a heavy movement from and to the latter points. Based on carloads of 60,000 pounds, the single-line interstate charges to Brunswick would be lower, however, than the proposed in-[fol. 146] trastate charges to Pensacola, although somewhat higher than the proposed intrastate charges to Gainesville. Moreover, certain proposed joint-line intrastate rates, on cars containing 60,000 pounds, are higher than certain interstate rates.

It will be understood, as hereinafter stated, that the only increase in the intrastate rates, which is contemplated by our findings herein, is an amount sufficient to bring such rates up to a level not exceeding the corresponding rates generally in effect on interstate traffic to or from Florida

after giving due consideration to the minimum weights and to the peninsular arbitraries where applicable for hauls or portions of hauls within the peninsula. Under our findings, the increased intrastate rates, minimum 40,000 pounds, will alternate with lower intrastate rates, minimum 60,000 pounds.

Sugar Cane.—Refusal of the Florida Commission to permit increases in the intrastate rates on sugar cane has resulted in an estimated annual loss of revenue of the Coast Line and the East Coast amounting to $183,066. This cane is shipped from points south and southeast of Lake Okeechobee, milled by the United States Sugar Corporation at Clewiston, Fla., and the outbound products are raw sugar, blackstrap molasses, and some cane pith dehydrated. All of the sugar moves interstate to Port Wentworth (Savannah), Ga. The molasses moves intrastate and interstate. The local intrastate rates on the cane are on a distance basis prescribed by the Florida commission but have not been used because a very much lower intrastate transit distance scale applies on the cane upon condition that the respective inbound carriers will receive the haul on the outbound product. An interstate transit tariff carrying these net transit rates, with the general increases added, was filed with us. The operation of this tariff was suspended in [fol. 147] I. & S. Docket No. 5646, heard immediately after the instant proceeding. Regardless of the action in the suspension proceeding, a portion of the outbound product, consisting of molasses, will continue to move in intrastate commerce. The record indicates that the only interstate movement of sugar cane is that within Florida hereinafter considered in the suspension proceeding. The intrastate rate situation will be considered in connection therewith. It may be stated here, however, that the facts of record will not support a finding that the present unused local intrastate rates on sugar cane should be increased except as necessary to observe as a minimum the Florida intrastate transit rates increased as herein authorized.

Miscellaneous Commodities.—With respect to intrastate rates which with the increases sought by respondents will not be on a higher level than the corresponding interstate rates, the previous discussion herein, relating to the more

important commodities, is fairly representative of the relative situation, intrastate compared with interstate, disclosed in the record concerning numerous commodities which move under the rates in issue. Exhibits show in detail the intrastate rate on practically every commodity of any importance moving in Florida as compared with interstate rates for comparable hauls of the same commodities.

Important commodities include those previously mentioned and tin cans, plaster, asphalt, fiberboard boxes, brick, insecticides, lime, and livestock. The general basis of rates on plaster and asphalt is column 17.5, interstate and intrastate. Fiberboard boxes are on the column 27.5 basis. These and other column rates lower than 35R or V are subject to the peninsular arbitraries. On cement from and to numerous specified points, the amount of the peninsular arbitrary is the same on interstate and intrastate traffic. [fol. 148] Of course, intrastate and interstate rates which are subject to peninsular arbitraries are higher than intrastate and interstate rates which are not subject to those arbitraries.

On common brick from interstate points to the peninsula, the arbitrary in connection with distance rates generally in effect would be the same as from north Florida points thereto, except in instances where specific commodity rates apply from some Georgia origins, which commodity rates were established for specified competitive reasons. The general level of rates on insecticides in the South is column 26, minimum 40,000 pounds, or column 30, minimum 30,000 pounds. Class L rates apply intrastate in Florida. The present intrastate rates range from 11.2 to 18.2 percent of first class. On lime, the proposed intrastate rates generally would not exceed the interstate basis of rates to and from Florida, making allowance for differences in minima and peninsular arbitraries. According to respondents, the intrastate shippers have been unwilling in the past to forego the advantage of their low minimum of 24,000 pounds, as compared with interstate minima of 30,000 and 50,000 pounds.

To deal with each of the other commodities separately is not essential. It will suffice to find that, so far as appears on this record, the intrastate rates, with the addition of

the increases sought on these commodities, will in no instance be on a higher level than the corresponding interstate rates giving due consideration to differences in minima and to the peninsular arbitraries where applicable.

As previously indicated, it will be understood that the only increase in the intrastate rates on these or any other commodities which is contemplated by the finding herein is an amount sufficient to bring such rates up to a level not exceeding that in effect on interstate traffic to and from [fol. 149] Florida, giving appropriate consideration to the peninsular arbitraries where applicable.

Additional evidence supporting respondents.—The Pennsylvania-Dixie Cement Corporation introduced evidence for the purpose of showing that it was unduly prejudiced and disadvantaged by reason of the failure to increase the Florida intrastate rates on cement correspondingly with the interstate rates under Ex Parte 162 and Ex Parte 166. This shipper operates numerous cement mills, including one at Clinchfield, Ga., and two in Tennessee. It makes numerous shipments of cement to destinations throughout the State of Florida in competition with a cement mill located at Tampa, Fla., and it finds it increasingly difficult to compete with the intrastate shipper by reason of the relatively low intrastate rates.

Collectively, the evidence of this shipper and of respondents herein shows that on traffic generally the Florida intrastate rates are relatively lower than the interstate rates, and that the existing disparities, excepting those on sugar cane, will result in advantage to the Florida intrastate points and in serious disadvantage to interstate points. No good purpose would be served by adding to the foregoing further illustrations of rate inequalities. It is not necessary to deal with each individual rate for the purpose of supporting a State-wide order. In *Georgia Public Service Comm.* v. *United States*, 238 U. S. 765, at page 774, the Court said:

> When an investigation involves shipments from and to many places under varying conditions, typical instances justify general findings. * * * While the order relates to only a few commodities, the scales of rates are state-wide in operation; and they apply to shipments between hundreds of points of origin and

destination. To require specific evidence and separate adjudication in respect to each would be tantamount to denying the possibility of granting relief.

[fol. 150] *Additional evidence for protestants.*—The commodities dealt with by the protesting shippers include lumber, logs, pulpwood, fertilizer, phosphate rock, resinous wastewood, sugar cane, agricultural limestone and dolomite, asphalt, plaster, fiberboard boxes, insecticides, brick, cement, and lime. Certain shippers of agricultural limestone and certain other commodities request that no increase be required in the intrastate rates on such commodities for short distances on the ground that there is little likelihood of interstate movements of those commodities for short distances. While there may be no interstate movement of these particular articles from or to Florida for short distances, the record shows that there are other interstate movements to Florida. In numerous instances the intrastate and interstate movements were to the same or comparable Florida destinations.

Many protesting shippers, and certain short line railroads, which depend largely upon the log and lumber traffic, contend that the intrastate traffic will not bear an additional increase. The evidence in support of this contention is not entirely convincing. As stated in *Increases in Alabama Freight Rates and Charges, supra,* at page 459, it might be, as is usually the case when extensive rate changes occur, that increases in the intrastate rates would result in some traffic losses to respondents by reason of diversion of tonnage to other competing forms of transportation, but the opinion of one or more protestants that the railroads would receive less aggregate revenue than they are now receiving on certain *traffic is purely conjectural, and respondents' evidence is to the contrary.*

Truck competition.—The informed judgment of the Florida Railroad and Public Utilities Commission, was that increases in the rates on certain commodities would divert [fol. 151] such traffic from the rail lines and result in a loss of revenue rather than an increase. This conclusion was confirmed to a large extent by the action of respondents in withdrawing from this proceeding certain commodities including road aggregates, petroleum and its products, and, between points on the East Coast, fertilizer and its products,

and other commodities on which the increased revenue originally sought herein was estimated at $891,309. As previously indicated our findings herein contemplate no higher single-line rates on fertilizer than those maintained by the East Coast. A different situation, however, exists with respect to the remaining commodities. The record shows affirmatively that nearly all of such commodities are moving in volume from competing interstate points of origin to Florida destinations in most instances at rates considerably higher than those proposed herein for intrastate movements of the corresponding commodities. Moreover, despite the effect on volume of increased rates, respondents' net railway operation income for all operations in Florida for 3 months ended March 31, 1948, increased 26.6 percent over those for the corresponding period in 1947. The corresponding percentage for the year 1948 as compared with the year 1947 was 60.4 percent. Respondents' net railway operating income for freight in 1948 exceeded that for any previous year since 1935, with the exception of 1942. Expenses, of course, also increased during these periods.

The record indicates that the increases sought will result in intrastate rates under which there will be a substantial increase in revenue to respondents.

Peninsular arbitraries.—Other protesting shippers object to the arbitraries which apply in peninsular Florida. These arbitraries were prescribed on interstate class and commodity traffic in numerous interstate proceedings and, in [fol. 152] authorizing the general increases under Ex Parte 162 and Ex Parte 166, no exceptions were made with respect to the numerous rates which were subject thereto. They have been discussed herein at length under the subject of class rates. The record does not warrant any treatment in regard to rates subject to the peninsular arbitraries different from the treatment in regard to other rates here in issue. The situation in this respect is no different within Florida than from or to Florida. Under the issues herein, protestants apparently object, not primarily to the arbitraries, as such, but to the general increases in those arbitraries, and the consequent greater ton-mile revenues for operations in Florida than for operations elsewhere in the South. Between St. Petersburg, Fla., and 11 southeastern points, for

example, the interstate first class arbitrary, governed by exceptions ratings, has been increased on the average 11 cents since the Docket No. 13494 rates were established. The base rates, however, also have been increased by substantial amounts. With respect to base rates, the intrastate shippers generally are located so that their traffic moves shorter distances, hence they pay or absorb a lower rate, and are generally subjected to a lesser amount of increase thereon than the interstate shipper.

Aside from the instances referred to in the discussion of individual commodities, and taking into consideration comparable minimum weights and the peninsular arbitraries where applicable, the record indicates that the increases sought will result in intrastate rates which will in no instance exceed the corresponding interstate rates to or from Florida.

Relative transportation conditions.—Responsible operating witnesses of the Seaboard and the Coast Line, which carriers have the longest mileage in Florida and also operate in other southern States, testified that purely operating [fol. 153] conditions in Florida are no more favorable and even less favorable than those existing in adjacent States. For the Coast Line, Seaboard, and East Coast combined, (a) Florida operations, (b) system operations, and (c) operations of all carriers in the entire southern region, respectively, in 1947, the revenue tons per train-mile were 703.9, 724.2, and 843.1 tons; the revenue tons per locomotive mile-road were 688.7, 687.1, and 787.7 tons; the revenue tons per car-mile were 18.4, 17.3, and 19.4 tons; the freight operating ratios were 75.4, 75.6 and 72.3; and the passenger operating ratios were 112.8, 116, and 117.2.

Intrastate and interstate traffic in Florida is intermingled and carried in the same trains, whether through or local, on main and branch lines, and the same employees are engaged in handling both kinds of traffic. In fact, the cost of train operations is higher on intrastate than on interstate traffic by reason *of the fact that the preponderance of the intrastate traffic is in local trains; whereas the interstate traffic moves predominantly in through trains.* For example, the Coast Line *local train operating between* Jacksonville and Sanford from March 13 to 24, 1949, handled *127 intra-*

state cars and 51 interstate cars, whereas the through train operating between these points in that period *handled 55 intrastate and 106 interstate cars*. In both instances, all empty cars and some cars that may have been diverted later to interstate destinations were counted as intrastate cars. Moreover, this is an example of ordinary trains carrying all classes of traffic and not of trains devoted almost exclusively to one commodity, such as citrus fruit, vegetables, and road aggregates not involved herein, as well as logs, pulpwood, phosphate rock, and sugar cane which are involved herein. According to protestants, very [fol. 154] little phosphate moves intrastate, however.

Wages paid the crew and overtime worked are higher on the average for a local train than for a through train. During 1948 local train-miles as compared to total train-miles on the Seaboard were 61.9 percent on its south Florida division, 24.2 percent on its north Florida division, and only 21.5 percent for the system. In 1948, the cost, for example, of crew wages and fuel for 1,000 gross ton-miles on the two Florida divisions was 88 cents as compared with 74 cents for the remainder of the system. Because of shorter runs, overtime, the necessity of making up and breaking up ordinary local trains at each terminal, and various other factors of record, the unit cost of handling a given quantity of freight a certain distance in ordinary local trains is greater than the unit cost of handling a like quantity of traffic a like distance in through trains.

These facts lend support to numerous other facts of record showing that the unit cost of handling Florida intrastate traffic is at least as great as the cost of handling interstate traffic within Florida, including sugar cane, and interstate and export or import traffic from and to Florida points, including phosphate rock. Increases in recent years in growth of population and tonnage terminated and originated in Florida, and the agricultural and industrial conditions in Florida, as compared with certain other States, obviously bear alike to a considerable extent upon both the intrastate rates and the interstate rates to and from Florida.

In *Miami Bottled Gas, Inc.* v. *Abilene & S. Ry. Co.*, 274 I.C.C. 61, 68 division 3 stated:

> The excessive amount of empty car mileage which is performed in handling Florida traffic as compared with the Atlantic Coast Line system as a whole is illustrated by the following figures: In 1938 the percent of empty to loaded mileages in Florida was 76.6 percent, while for the system as a whole it was 61.8 percent; [fol. 155] in 1942 it was 72 and 57.7 percent, and in 1947, 69 and 49.5 percent, respectively.

From respondents' evidence in the instant proceeding a similar conclusion may be drawn. On the Seaboard, for example, the percentage of empty to loaded car mileage in 1948 on the lines in Florida was 136.57 percent of that on other portions of the system. The relative percentages of empty car mileages for interstate and intrastate traffic is not shown however.

Revenue needs of respondents.—The conclusions reached in Ex Parte No. 162 and Ex Parte No. 166 were based upon the need of the railroads generally, including respondents herein, for additional revenue to enable them to meet increased operating expenses, including increased wages of employees, the so-called payroll tax, and increased costs for materials and supplies. In 1948, the rate of return earned by the principal respondents herein on their property investment, including materials and supplies and cash as of the close of the periods for which computed, averaged 2.29 percent and on such investment less depreciation, 2.91 percent. In 1946, the corresponding figures for the Coast Line were 1.28 and 1.62 percent; those for the Seaboard were 3.91 and 4.91 percent; and those for the East Coast were 3.87 and 4.35 percent, respectively.

In 1947, without the general increases as made on interstate traffic and on most of the intrastate traffic, a net railway operating income of $13,383,693 earned by these three respondents would have been converted into a deficit of $16,871,215. As stated, the revenue loss as estimated by respondents because of the failure to authorize the increases herein sought is $915,325 a year. Obviously, the

great preponderance of this severe loss will fall upon the three principal respondents. The figures include no estimated revenue loss on certain smaller roads in Florida. [fol. 156] The estimated loss would have been increased accordingly if such roads had been included. During the first four months of 1949 as compared with the corresponding months in 1948, the railway operating income of the principal respondents declined 10 percent, as compared with 7.6 percent for other carriers in the southern region. During this period federal income taxes of the Coast Line and Seaboard increased $513,000.

Diversions to intrastate routes.—The record shows that the present Florida intrastate rates have caused the diversion of traffic, which normally moves over intrastate routes, to unnatural and in some instances more circuitous intrastate routes, thus causing an added burden upon interstate commerce. Typical illustrations of such diversions are of record. For example, with the formerly existing rate parity over intrastate and interstate routes, the Coast Line was able to secure large movements of traffic from Florida origins on its rails to Panama City and Port St. Joe, Fla. Following the refusal of the Florida Commission to authorize increases corresponding to those on interstate traffic in Ex Parte 162 and Ex Parte 166, the Coast Line was compelled to move this traffic intrastate through nearby junction points instead of over its established interstate routes through Dothan, Ala. During December 1948 and January 1949, the difference in the Coast Line's revenue on such traffic to Panama City was $6,746. In this particular instance, the established interstate route appears to be somewhat longer than the intrastate routes which were actually used.

Additional losses of revenue occurred to this respondent on traffic to and from other points also by reason of diversion of interstate traffic to cheaper intrastate routes, or because it was forced to meet, over its normal interstate route, the lower rates maintained over competing intrastate [fol. 157] routes. The losses thus sustained are not included in the estimate of $915,325 above mentioned.

Motion for dismissal.—At the close of the hearing, the Florida Railroad and Public Utilities Commission pre-

sented a motion for dismissal or denial of respondents' petition on which this proceeding was instituted, on the grounds, among other things, (1) that the record does not show the value of railroad property devoted to Florida intrastate business nor the revenue required to yield a fair return on such property; (2) that respondents' financial distress is due to deficits in passenger operations, and (3) that the record in various respects fails to meet the burden of proof imposed upon respondents to support the findings sought herein. Various shippers and their organizations joined in this motion. In our opinion, the findings hereinafter made are amply supported by the record herein.

Rate of return.—The Florida commission has interpreted certain State statutes as requiring the carriers to furnish detailed evidence to show among other things, the costs of operation in Florida, the rate of return, and the value of their properties devoted to intrastate transportation in that State. Respondents found it impractical to produce the data comprehended in such an interpretation of the statutes. We are unable to agree that the respondents have not made a bona fide effort to justify the proposed increased rates and charges before the Florida commission. For the purpose of the instant proceeding it is not essential that the Florida commission make an affirmative finding, *Florida* v. *United States*, 282 U. S. 194, 210. Our function in administering section 13(4) of the act is not that of an appellate tribunal. *Increases in Kansas Freight Rates and Charges*, 231 I. C. C. 137, 138. The proportionate percent- [fol. 158] ages of each individual class of traffic moving intrastate and interstate is not shown. Nevertheless, where, as is the case here, the intrastate and the interstate traffic, as a whole, moves under substantially similar conditions, and the expense of handling the two classes of traffic are inextricably woven together, an attempt to do the impossible, namely an attempt to show costs of intrastate service segregated from interstate costs, together with similarly segregated valuation of carrier property, would serve no useful purpose.

In 1948, the East Coast which operates entirely in Florida had a return of 2.45 percent based upon an investment of $87,272,435. Its passenger deficit was $2,830,082.

Our power to require an increase in intrastate rates depends upon whether intrastate traffic is contributing its fair share of the earnings required to meet maintenance and operating costs and to yield a fair return on the value of the property devoted to the transportation service, both interstate and intrastate. Respondents are not seeking an increase in the intrastate revenue sufficient to give them a fair return on the value of their property devoted to freight service but merely to secure a contribution to maintenance and operating costs, including taxes, more nearly proportionate to the contribution thereto made prior to the increases in Ex Parte 162 and Ex Parte 166. We may properly use such prior contribution as a valid criterion of fairness, in the light of which the Florida intrastate rates and charges in 1947 and 1948 afforded a disproportionately small share of the revenue required to meet the costs of the service in Florida. This condition has been aggravated by the continuing rise in operating expenses following Ex Parte 162 and Ex Parte 166, which impelled us to authorize additional increases in freight rates and charges in Ex Parte 168.

[fol. 159] *Passenger deficits.*—In the last report in Ex Parte 168, wherein we discussed the subject of passenger deficits at length (276 I. C. C. 32 et seq.) we said that we felt compelled in a general rate case to take such deficits into account in the adjustment of freight rates and charges. Both the freight and passenger services are essential. The action in Ex Parte 168 was taken without prejudice to subsequent examination of the question upon complaint or in an investigation of our own. Of course, the passenger business may not be excused from contributing the greatest possible earnings consonant with adequate service and reasonable charges. *The carriers must exert every legitimate effort to* [illegible] this branch of their operations on a more compensatory basis. *Increased Freight Rates 1948, supra; Revenues in Western District*, 113 I. C. C. 3, 22, 23; *Property Owners' Committee* v. *Chesapeake & O. Ry. Co.*, 237 I. C. C. 549, 565.

The Florida commission states that it has never denied a requested increase in passenger or Pullman fares, or express rates, and that it has recently authorized the Coast

Line to withdraw two passenger trains and reroute two others at estimated annual savings of $365,000. In its opinion, there is little or no intrastate milk, mail, and express service in Florida. Various steps have been initiated by the carriers and considered by us in an effort to place interstate passenger operations on a more compensatory basis. Increased passenger deficits, by reason of the continuing rise in operating expenses and the growing use of other forms of transportation, is a condition bearing alike upon intrastate and interstate rates. *There is here no claim or showing that the passenger deficits of the respondents do not result from intrastate as well as interstate operations,* and the passenger deficit of the East Coast, which operates entirely within Florida, would appear to indicate to the contrary.

The record affords no justification for a difference in treatment in this respect between Florida intrastate traffic, on the one hand, and interstate traffic to and from Florida, [fol. 160] on the other hand. The question of passenger deficits is a serious one for both carriers and shippers, and would become even more serious for interstate shippers if this burden were imposed entirely upon them.

I. & S. Docket No. 5646

By schedules filed to become effective April 13, 1949, respondents, the Coast Line and the East Coast, proposed to establish interstate distance transit rates on sugar cane, in carloads, from loading stations on their lines in Florida to Clewiston, Fla., under extensive transit provisions, including the condition that the outbound movement of the products, namely raw sugar, blackstrap molasses, and ground dehydrated sugar cane pith, be made over respondents' lines in designated proportions. As previously stated, most of this outbound movement goes to interstate destinations. The proposed minimum is 40,000 pounds from October 1, when the shipping season begins, to January 31, and 44,000 pounds thereafter to September 30. Upon protest of the United States Sugar Corporation, which operates a mill at Clewiston, operation of the schedules was suspended to and including November 12, 1949. Respondents have

voluntarily deferred the effective date of the suspended schedules pending disposition of this proceeding.

The movement is in cars owned by the sugar company at a rental charge paid by respondents of 2 cents per mile while loaded. The hauls range from 2 to 12 miles over the Coast Line direct and from 9 to 29 miles over both lines from points served by the East Coast. In the 1948-9 season, 42,930 carloads of cane, weighing nearly a million tons, were handled in 1,280 trains, averaging 33.5 loaded cars a train. A heavy volume of traffic moved from Canal Point, Fla., to Clewiston, 29 miles. All of the traffic was delivered on the interchange tracks, owned and maintained by the sugar company whose engines thereafter performed all necessary switching. The sugar company weighed the cars and owns the storage tracks at destination on which empty cars are assembled for the reverse movements to points of origin. [fol. 161] At present, Florida intrastate transit distance rates are applied on this traffic. The same rates plus the increases under Ex Parte 162 and Ex Parte 166 are now proposed for interstate application, subject to the increases in Ex Parte 168. Originally, the sugar company operated under trackage rights over tracks of the railroads. The rates were made 60 percent of certain Cuban transportation rates plus certain Cuban accessorial charges, subject to Cuban minima of 30 tons per car and 30 cars per train. Subsequently, upon insistence of the sugar company, the accessorial charges were canceled. Moreover, the minima were reduced to 15 carloads per train and to 20 and 22 tons per car for the first and last parts of the shipping season, respectively. It was agreed that outbound movements of sugar should go to respondents in certain proportions. In 1936 the rate from Canal Point, the most important shipping point, was reduced from 34 to 28 cents per net ton. Following differences with organized labor in 1941, respondents took over the transportation service. In 1942, they established the intrastate rates agreed upon, which rates are those still in effect.

These Florida rates were and are substantially lower than intrastate rates in Louisiana prescribed by the Louisiana commission, minimum 30,000 pounds, and even substantially lower than voluntarily established Louisiana

short-haul rates, minimum 50,000 pounds. Originally, the Florida rates for single-line and joint-line application ranged from 3 to 33 cents per net ton lower than the compared single-line rates in Louisiana. The present net transit rates, for example, from Coast Line points to Clewiston range from 30 to 40 cents per net ton, and the proposed rates range from 44 to 58 cents per net ton, as compared with 86 cents if the Louisiana basis were applied instead.[5] Moreover, the Florida cane is more valuable than [fol. 162] the Louisiana cane, and there is a substantial movement of Louisiana cane which is handled in large cuts of cars. The volume of movement in Louisiana, however, is not shown to be as heavy as that in Florida.

The charges per minimum carload of 40,000 pounds, range from $6 to $11 at the Florida intrastate transit rates and from $8.80 to $15.80 per car at the interstate transit rates proposed herein. The maximum haul under these charges is 29 miles from Canal Point, which is a two-line haul. Canal Point, as stated, is the most important shipping point. Published transit charges on other traffic, intended merely to cover the expense of keeping records and other services incidental to transit services in the South, including Florida, range from $10 to $57.50 per minimum carload. The proposed single line interstate rates, ranging from 44 to 58 cents a net ton, are compared with certain high, but unused, local distance rates, for similar distances, ranging from 71 to 142 cents.[6] The proposed two-line interstate rate of 79 cents from Canal Point is compared with the corresponding unused local intrastate distance rate of $2.77.

The operating and transportation conditions in the handling of Florida cane are described in detail in the record. For example, the East Coast train crews, which consist of 5 men each, are on duty between Lake Harbor, Fla., and Canal Point an average of 4.5 to 5 hours daily, but under existing working agreements must be paid for 8 hours time plus an additional allowance of 1 hour at Lake

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[5] See footnote 2.

[6] On March 6, 1950, a complaint was filed with the Florida Commission requesting it to prescribe local rates to be subject to no reshipping requirements.

Harbor. The movement of trains of other freight between Canal Point and Clewiston are frequently delayed be- [fol. 163] cause the cane trains are given preference. In the perishable season, however, vegetable trains also are expedited and some of them move late in the evening when the cane trains are not in operation.

Protestants estimate respondents' total operating expenses to be $270,145 as compared with revenue of $400,774 in the 1948-1949 season, making the estimated operating ratio 67.4. This ratio would be reduced considerably if payroll taxes were excluded, and revenues were estimated on basis of minima of 40,000 and 44,000 pounds with the general increases added to the rates but still with 1948-9 season expenses. Instead of using annual reports of the railroads to this Commission and the Florida authorities in arriving at these figures, *protestant first estimated the cost for operating 33.41 miles of track owned by it; obtained the average of this cost per mile; multiplied that average by 41 miles of track used by the East Coast and the Coast Line, without distinction as between these two respondents, thus obtaining the estimated cost for maintenance of way and structures for both railroads for handling cane, with no deduction for the handling of other commodities, such as fruits and vegetables, on the same tracks. Protestant then separated the cost of maintaining its 7 locomotives, used to switch the cane traffic, between labor and materials; used a portion of transportation expenses, and locomotive supplies and expenses, in proportion to (1) general overhead expenses and (2) general overhead expenses for maintenance of equipment accounts; separated those expenses between the portion applicable to locomotives and the portion applicable to the maintenance of cars; used the labor for firing locomotives, and so forth and the labor portion of all accounts, increased 12 percent, as with maintenance of way and structure, to cover payroll expenses, injuries and vacations; thus arrived at total cost of maintenance of locomotives of $42,954.96; allowed 90 percent for* the cane [fol. 164] traffic and 10 percent for other traffic; obtained the average cost per locomotive; and multiplied that average *by 3, producing an estimated cost of $16,568.34.*

However, the *Coast Line assigns 4 steam engines and the East Coast uses 2 diesel locomotives in this service.*

In using various estimates to compute respondents' expense for transportation, nothing was included for the cost of dispatching trains, overhead, yard service, train and engine supplies, enginehouse expenses, crossing protection, loss and damage to shipments, or injuries to persons, other than expenses referred to above. The important items of return on investment, and taxes on property used in the transportation service, were omitted. Moreover, the basing of rates solely on the fully distributed costs would ignore value-of-service and other considerations.

When the net transit intrastate rates were originally established in 1942 the minima of 40,000 and 44,000 pounds were established. On account of labor conditions during the war, a minimum of 38,000 pounds was established in 1944. Subsequently, the minima became 36,000 and 38,000 pounds in 1946, which were continued until the 1948-49 season when the railroads reestablished the original minima of 40,0000 and 44,000 pounds. Respondents' tests showed that each car used in this service made two trips, and some made from 3 to 16 trips, loaded to or in excess of the latter minima. During the first period when the minimum was *40,000 pounds*, the average loading was *41,399 pounds*. During the second period when the minimum was *44,000 pounds*, the average was *43,817 pounds*. The cars are uniform in size and were loaded above the tops of the racks. Based on 18,900 carloads and minimum penalty charges thereon of $14,740.26, the average penalty per car would be [fol. 165] 78 cents. Based on total carloads with and without penalty charges, the average was 34 cents. This average penalty would be increased if based on the increases sought. Where, as here, there is a wide variation in actual loading, the minimum weight should be somewhat less than the average loading.

Present and proposed transit rules require (1) routing of outbound products in proportion to inbound cane received from these two respondents; (2) laboratory tests to determine the amount of products from each ton; and (3) the furnishing of reports every three weeks. The tariffs

further provide (1) for local usage or sale of 500,000 gallons of blackstrap a season; and (2) for application of the high nontransit rates on cane if proportionate amounts of products are not shipped within a period of 18 months. In addition to present intrastate requirements, the suspended interstate tariff further provides (1) that bond shall be furnished, and (2) that freight charges shall be paid each 96-hours. In this connection, see *Regulations for Payment of Rates and Charges*, 273 I. C. C. 681, and prior reports mentioned therein.

Findings and Conclusions

Upon the record before us, we find and conclude:

1. That the interstate transit rates, charges, minimum weights, and rules proposed in I. & S. No. 5646 are just and reasonable, except the proposed minimum of 44,000 pounds from February 1 to September 30. We find that a just and reasonable minimum for that period should not exceed 42,000 pounds.

In No. 30140, we further find—

2. That the transportation conditions incident to the [fol. 166] intrastate transportation of freight in Florida are not more favorable and such conditions in the Florida peninsula are somewhat less favorable than those (1) within southern territory and (2) between Florida and interstate points.

3. That the present interstate freight rates and charges within Florida and between points in Florida and points in other States are just and reasonable, including those proposed within Florida in I. & S. No. 5646, to the extent above found just and reasonable; and that intrastate rates, charges, and minimum weights herein approved will not exceed a just and reasonable level.

4. That there is *active competition between localities engaged in interstate commerce between points in Florida and points in other southern States, on the one hand, and localities engaged in intrastate commerce in Florida*, on the other hand, and that this competition extends for all practical purposes throughout the entire State of Florida.

and to class and commodity traffic generally, but not including sugar cane to the mill, molasses, and, for short hauls, mixed fertilizer and a few other commodities.

5. That the Florida intrastate rates, charges, and minimum weights, which are below the level herein authorized, are abnormally low and are *not contributing their fair share to the revenues required by respondents to enable them to render adequate and efficient service and to operate profitably* and thereby accomplish the purpose of the Interstate Commerce Act, and as set forth in the national transportation policy declared by the Congress, to develop and preserve a national transportation system adequate to meet the needs of the commerce of the United States, of the postal service, and of the national defense; and that the burden thus cast upon interstate commerce is undue to the [fol. 167] extent that these intrastate rates and charges are less than they would be on the basis herein approved.

6. That the establishment of intrastate rates and charges increased sufficiently to equal the level herein approved will substantially increase respondents' revenues therefrom, and will constitute not more than a fair proportion of respondents' total income, not taking into consideration the Ex Parte 168 increases.

7. That the maintenance of intrastate rates and charges within Florida on bases lower than those herein approved causes, and in the future will cause, (1) in all instances, unjust discrimination against interstate commerce, (2), in nearly all instances, undue preference of and advantage to localities in intrastate commerce, and undue prejudice to localities in interstate commerce; and (3) undue and unreasonable advantage and preference to intrastate shippers of cement, particularly those at Tampa, Fla., and undue prejudice to interstate shippers, especially those at Clinchfield, Ga.

8. *That this unjust discrimination and undue prejudice* should be removed by establishing intrastate rates and charges between points in Florida *which will reflect the same increases as are, and for the future may be, maintained by respondents on like interstate traffic to and from Florida* and within Florida under our authorizations in Ex Parte No. 162 and Ex Parte No. 166, modified as herein

indicated and as proposed before the Florida commission in proceedings referred to herein: *provided*, that, under these findings, (1) on sugar cane, the present Florida intrastate transit rates should be increased to reflect the Ex Parte 162 and Ex Parte 166 increases but the minimum weights thereon should be the same as the minima author-
[fol. 168] ized in I. & S. No. 5646, and the present high unused Florida intrastate non-transit rates should not be increased, except as necessary to observe as a minimum the Florida intrastate transit rates increased as herein authorized; (2) that on wastewood, the increased intrastate rates, minimum 40,000 pounds, authorized herein, shall alternate with intrastate rates, minimum 60,000 pounds, which latter rates shall not exceed the interstate rates, minimum 60,000 pounds, applicable, from August 21, 1948, to, but not including, January 11, 1949, the effective date of the initial interim increases authorized in Ex Parte No. 168, for corresponding distances from Coast Line stations in Florida to Brunswick, Ga.; (3) that on pulpwood, no increase shall be made in Florida joint-line charges nor in Florida single-line distance rates which would cause those rates or charges to exceed the level of the corresponding rates contemporaneously maintained on interstate traffic during the foregoing period from or to Florida points under the Roanoke Rapids scale; (4) that on fertilizers and fertilizer materials, no increase shall be made in Florida single-line intrastate rates which will cause such rates to exceed the level of the single-line intrastate rates maintained by the Florida East Coast Railway immediately prior to January 11, 1949, the effective date of the initial interim increases authorized in Ex Parte No. 168; (5) that no intrastate rate or charge shall be increased so that it will exceed the lowest level of the corresponding rates or charges contemporaneously maintained generally on interstate traffic to and from Florida points in the period from August 21, 1948, to, but not including, January 11, 1949; and (6) that the foregoing provisions shall be construed so as to make due allowance for differences in minimum weights and for the Florida peninsular arbitraries where applicable.

[fol. 169] These findings are without prejudice to the right of the authorities of the State of Florida, or any other

interested party, to apply for a modification thereof as to any specific intrastate rates or charges on the ground that they are not related to the interstate rates or charges on like traffic in such a way as to contravene the provisions of the Interstate Commerce Act.

Protestants' motion to deny respondents' petition and to dismiss this proceeding is overruled.

In No. 30140, an order carrying into effect the foregoing findings will be entered, *unless we are notified by the Florida commission, within 30 days from the date of service of this report, that it will permit promptly the increases herein approved. In I. & S. No. 5646, an order will be entered requiring cancel-ation of the suspended schedules, without prejudice to the establishment of rates, minima, and rules in conformity with the foregoing findings.*

[fols. 170-171] ORDER

At a General Session of the Interstate Commerce Commission, Held at Its Office in Washington, D. C., on the 4th Day of May, A. D. 1950

Investigation and Suspension Docket No. 5646

Sugar Cane, Florida to Clewiston, Fla.

It appearing, That by order dated April 12, 1949, the Commission entered upon a hearing concerning the lawfulness of the rates, charges, regulations, and practices stated in the schedules enumerated and described in said order, and suspended the operation of said schedules to and including November 12, 1949; and that respondents have voluntarily deferred the effective date of the suspended schedules pending disposition of this proceeding;

It further appearing, That a full investigation of the matters and things involved has been made, and that the Commission, on the date hereof, has made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof;

It is ordered, That the respondents herein be, and they are hereby, notified and required to cancel said schedules,

on or before June 15, 1950, upon notice to this Commission and to the general public by not less than one day's filing and posting in the manner prescribed in section 6 of the Interstate Commerce Act, and that this proceeding be discontinued, without prejudice to the establishment of new schedules in conformity with the conclusions in the report herein.

By the Commission.

W. P. Bartel, Secretary.

[fol. 172] BEFORE THE INTERSTATE COMMERCE COMMISSION

PETITION FOR REHEARING BY FLORIDA RAILROAD AND PUBLIC UTILITIES COMMISSION—June 19, 1950

Comes now the Florida Railroad and Public Utilities Commission and respectfully petitions the Interstate Commerce Commission to reconsider its decision in this proceeding wherein the Report of the Commission bearing date as "decided May 4, 1950" was filed and copies thereof mailed to parties from Washington, D. C., on or about May 15, 1950 (copy thereof being received by the Florida Commission and its Staff on May 17, 1950), and, upon such reconsideration, to dismiss the Carriers' Petition herein and discontinue this proceeding on the following grounds to-wit:

1. The Commission's Report is contrary to the evidence of record in this proceeding.

2. The Commission's Report is contrary to the applicable [fol. 173] provisions of law.

3. The Commission's Report ignores the fact that the Respondent Railroads are earning a fair and reasonable return from their Florida intrastate freight operations and that any further increases in Florida intrastate freight rates will be unreasonable, unwarranted and contrary to law.

4. The Commission's Report, if made effective by appropriate order, will unlawfully impose upon Florida intrastate shippers of goods deficits incurred by the railroads in the operation of their passenger service.

5. The Commission's Report, if made effective by appropriate order, will result in an unwarranted and arbitrary

imposition of excessive charges upon the intrastate shippers of goods in Florida in order to supply an adequate return for the carriers' entire service.

6. The Commission's Report fails to find what contribution from Florida intrastate traffic would constitute a fair proportion of Respondent Railroads' total income.

7. The Commission's Report fails to find what amount of revenue is required to enable Respondent Carriers to operate efficiently.

8. The Commission's Report fails to find that the present Florida intrastate freight rates are less than compensatory or that they are insufficient to cover the full cost of service.

9. The Commission's Report fails to find that the maintenance of the proposed increased intrastate freight rates in Florida is necessary to the operation of a nationally efficient [fol. 174] and adequate transportation system.

10. On the basis of the record herein the Commission is without authority to supplant state-prescribed intrastate freight rates in Florida.

11. The entry of an order carrying into effect the findings contained in the Commission's Report aforesaid is unwarranted by the record in this proceeding and will be contrary to law and constitute an illegal invasion of the rights of the State of Florida and its citizens.

Wherefore, the Florida Railroad and Public Utilities Commission respectfully petitions the Commission for a rehearing in this proceeding for the purpose of reconsidering its Report aforesaid, and upon such reconsideration it is respectfully urged that the Commission give full consideration to the various grounds herginbefore set out and that a final order be entered herein dismissing the Carriers' Petition and discontinuing this proceeding.

Respectfully submitted, Florida Railroad and Public Utilities Commission, by Wilbur C. King, Chairman; Jerry W. Carter, Commissioner; Richard A. Mack, Commissioner; Fred Pettijohn, Director Commerce Department.

Lewis W. Petteway, General Counsel, Florida Commission, 700 S. Adams Street, Tallahassee, Florida.

[fols. 175-176] Certificate of Service (omitted in printing)

[fol. 177] BEFORE THE INTERSTATE COMMERCE COMMISSION

REPLY OF RESPONDENT RAILROADS TO PETITIONS FOR RECONSIDERATION OR REHEARING AND MOTION ON BEHALF OF RESPONDENTS FOR THE ENTRY OF AN ORDER—June 27, 1950

The respondent railroads have received copies of numerous petitions filed on behalf of various parties, including petitions of the Florida Railroad and Public Utilities Commission, Florida Rate Conference, Container Corporation of America, et al., Florida Lumber and Mill Work Asso., et al., Newport Industries, Inc., Florida Citrus Com-
[fol. 178] mission, et al., and United States Sugar Corporation.

The Florida Railroad and Public Utilities Commission seeks a reopening and rehearing of No. 30140 in its entirety. In a brief petition it merely enumerates matters heretofore advanced and relied upon without further elaboration or discussion.

The petition of United States Sugar Corporation, although relating entirely to the rates on sugar cane moving to Clewiston, Fla., contains a prayer that the Commission reopen and rehear both I. & S. 5646 and No. 30140 and that the Commission withhold the entry of an order in No. 30140 pending such further hearing.

The remaining petitions relate to certain individual commodities, reconsideration of No. 30140 being sought in so far as it relates to such commodities.

The petitions above referred to are filed by the same interests that have heretofore been fully heard on brief, exceptions and oral argument. They represent in the main a mere reiteration of contentions previously advanced, together with a claim that the Commission failed to agree with such contentions. Since respondents have heretofore filed a reply to protestants' exceptions (dated March 30, 1950 which dealt in detail with the exceptions of the individual protestants to the examiner's proposed report, respondent believe it to be unnecessary to cover over and
[fol. 179] over again the same ground in the way of further reply to these petitioners. Petitioners' efforts to delay the final disposition of these proceedings are being made in entire disregard of the long period of time in which the

proceedings have been pending and the fact that the respondent railroads are meanwhile continuing to be deprived of large amounts of revenue to which the Commission has found that they are reasonably entitled and of which they are urgently in need.

Rule 101(b) of the General Rules of Practice provides as follows with respect to petitions for rehearing or further hearing:

> "When in a petition filed under this rule opportunity is sought to introduce evidence, the evidence to be adduced must be stated briefly, such evidence must not appear to be cumulative, and explanation must be given why such evidence was not previously adduced."

In its petition for rehearing United States Sugar Corporation alleges (p. 6) that in reaching its conclusions in I.&S. 5646 the Commission "made serious errors in its findings of fact and took into consideration a number of points, or factors, resulting from incompetent, irrelevant and erroneous testimony presented by the railroads." It is further asserted that petitioner desires to offer so-called new and additional evidence respecting the rates, minimum weights and physical handling of petitioner's sugar cane, together with a new "cost study" which it would now [fol. 180] substitute for the study which was originally offered and was fully considered by the Commission. In other words this petitioner, being dissatisfied with its original presentation, would have the Commission afford it an opportunity to start over again in an effort to improve this presentation although it had ample time and opportunity to prepare and present its case in the beginning. Petitioner even goes so far as to assert (p. 18) that alleged errors in the Commission's findings are "due in part to errors in the briefs of the railroads" and due in part to the fact that petitioner's cost accountant's testimony "may not have been clearly understood"—which would appear to be strange grounds indeed upon which to seek a rehearing of a case before the Commission.

The petition of this protestant, like its brief and exceptions heretofore filed in this proceeding, is filled with exaggerated and unwarranted assertions of so-called "facts"

many of which are flatly contradicted by the evidence already of record.

For example, it is said in the petition for rehearing (p. 13) that there is "no origin-terminal switching" by the railroad in connection with the movement of cane delivered to the F.E.C. Ry. at Canal Point. Witness Hamilton, trainmaster of the F.E.C., testified that in the interchange operations at Canal Point, including the delivery of empty cane cars and the outbound movement of loaded cars, a very substantial amount of switching by the railroad is [fol. 181] required (R. 824—Respondents' brief, p. 34).

It is said in the petition (p. 8) that "there are no facts of record" which support a finding that the present rates on sugar cane are unduly low or that the maintenance of such rates causes a burden upon interstate commerce. One significant fact of record, however, is that on a minimum car of 40,000 pounds the revenue is as low in some instances as *$6 per car* and that the highest per car charge, covering a joint haul of 29 miles with an empty movement in the reverse direction, is *only $11 per car*, which is certainly very low revenue for any sort of railroad transportation. Petitioner, nevertheless, unhesitatingly asserts that the present rates are yielding "handsome profits" (p. 9).

Reference is made in the petition (p. 4) to alleged excessive penalty charges for failure to load to carload minimum requirements. The record shows, and the Commission mentions in its report, that on the cars as to which there were such penalty charges during the 1948-49 season the average charge per car was *only 78 cents* and that if the entire season's movement be included such average charge on this account was *only 34 cents* per car (Ex. 29, p. 42).

Although strenuously insisting that any reference to the rates applicable on Cuban sugar cane is wholly irrelevant petitioner, as a part of the "new evidence" which it desires [fol. 182] to present, says that it is now prepared to submit the results of an investigation which it has made with respect to the Cuban movement and rates (p. 14). The fact is that the Commission merely referred to the Cuban cane movement in the course of its historical review in the report (sheet 41) of the changes that have been made from time to time in the rates on sugar cane to Clewiston.

As constituting additional so-called "new evidence", petitioner (p. 15) makes various assertions as to what it would expect to prove with reference to the Louisiana cane movement and rates, claiming that the railroad witness who testified upon that subject was "not qualified." The record shows, however, that this witness, only a short time before the hearing, had personally visited the Louisiana cane fields for the immediate purpose of familiarizing himself with this subject. He described at length the points of dissimilarity as well as similarity between the Florida and Louisiana cane movements, respectively. His sworn testimony should be sufficient to establish the facts with sufficient certainty, at least with as much certainty as might be obtained through the testimony of some representative of the sugar company who may have made an investigation of the Louisiana cane movement. Petitioner had every reason to anticipate that the Louisiana cane rates would be used for the purpose of comparison with the Florida cane rates and every opportunity to prepare and present such evidence upon this subject as it might desire to offer.

[fol. 183] So far as concerns petitioner's "new" cost study (petition, pp. 18, *et seq.*) We have pointed out above that petitioner's original cost calculations (which were themselves amended and revised by petitioner after the hearing) were accorded full consideration by the Commission although, as the report states (sheet 44), fully distributed costs, even if reliably computed, do not constitute the sole measure of reasonable rates.

Petitioner (p. 29) states that it desires to present "new evidence as to the loading of cane" for the purpose of showing that the carriers' representatives "simply do not understand" this matter of car loadings. The carriers' evidence upon this subject, however, was based upon an actual check of the waybills covering the entire cane movement during the 1948-49 shipping season and including every shipment. If, as petitioner states (p. 29), there were "about 5,600 penalty cars" during the latest, or 1949-50, season it will be observed that the number of such penalty cars was *far smaller* in this last season than it was in 1948-49.

Finally this petitioner, although again insisting that it is

not seeking a transit tariff and does not expect to use such tariff, finds fault with the transit provisions as relating particularly to molasses, it being asserted that petitioner is unable to supply customers who wish to purchase the molasses locally at Clewiston (Petition, p. 31). When it is kept [fol. 184] in mind that the tariffs provide "for local usage or sale of 500,000 gallons of blackstrap a season" (Report, sheet 45), to which amount is to be added the substantial amount of molasses produced from "town-site" cane, i.e., cane grown in the immediate vicinity of Clewiston and not moved by rail at all, it would seem that the supply available for local sale should certainly be entirely adequate.

Respondents submit that the various petitions hereinabove referred to are without merit and that they should be denied by the Commission.

Motion for Entry of Order in No. 30140

The report herein of May 4, 1950 contains the following (sheet 49):

> "In No. 30140, an order carrying into effect the foregoing findings will be entered, unless we are notified by the Florida commission, within 30 days from the date of service of this report, that it will permit promptly the increases herein approved."

This report was released and served on May 15, 1950, since which date a period of more than 30 days has now elapsed. So far as respondents are advised, the Florida Railroad and Public Utilities Commission has not notified this Commission that it will permit promptly the increases approved in said report nor has it requested an extension of time in which to indicate its intentions in that respect. Respondents accordingly move that this Commission proceed forthwith to enter an appropriate order in No. 30140.

[fol. 185] Respectfully submitted, James A. Bistline, W. A. Northcutt, Charles Clark, Chas. P. Reynolds, Frank W. Gwathmey, Attorneys for Respondents.

June 27, 1950.

Certificate of Service (omitted in printing).

[fol. 186] BEFORE THE INTERSTATE COMMERCE COMMISSION

Investigation and Suspension Docket No. 5646

Sugar Cane, Florida to Clewiston, Fla.

ORDER DENYING PETITIONS—July 25, 1950

Upon further consideration of the records in the above-entitled proceedings and upon consideration of petitions of protestants including the Florida Railroad and Public Utilities Commission, Florida Rate Conference, Container Corporation of America et al., Florida Lumber and Mill Work Association et. al., Newport Industries, Inc., Florida Citrus Commission et al., and United States Sugar Corporation for reconsideration and rehearing; and it appearing that the reasons set forth in said petitions do not furnish sufficient justification for reopening the proceedings for reconsideration or rehearing;

It is ordered, That said petitions be, and they are hereby, denied.

By the Commission.

W. P. Bartel, Secretary.

[fol. 187] BEFORE THE INTERSTATE COMMERCE COMMISSION

FINAL ORDER—July 25, 1950

This proceeding having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been made, and the Commission, on May 4, 1950, having made and filed a report containing its findings of fact and conclusions thereon, which report is hereby referred to and made a part hereof; and

It appearing, That as set forth in said report and in accordance with the practice in such proceedings, the Commission stated that an order carrying into effect the findings in said report would be entered, unless we were notified by the Florida Commission, within 30 days from May 15, 1950, the date of service of said report, that it would permit promptly the increases therein approved, and that no such

notification has been made by the Florida Railroad and Public Utilities Commission:

It is ordered, That respondents in this proceeding, according as they participate in the transportation, be, and they are hereby, notified and required to cease and desist, on or before September 28, 1950, upon notice to this Commission and to the general public by not less than 30 days' filing and posting in the manner prescribed in section 6 of the Interstate Commerce Act, and thereafter to abstain, from practicing (1) the unjust discrimination against interstate commerce, and (2) the undue preference of and advantage to certain persons and localities in intrastate commerce and, undue prejudice and disadvantage to certain persons and localities in interstate commerce, found in said report to exist.

It is further ordered, That said respondents, according as they participate in the transportation, be, and they are hereby, notified and required to establish, on or before September 28, 1950, upon notice to this Commission and to the general public by not less than 30 days' filing and posting in the manner prescribed in section 6 of the Interstate Commerce Act, and thereafter to maintain and apply for the [fols. 188-189] intrastate transportation of freight from and to points in the State of Florida freight rates and charges which shall be no lower than the approved rates and charges, or on the approved rate bases, as provided in said report.

And it is further ordered, That this order shall continue in force until the further order of the Commission.

By the Commission.

W. P. Bartel, Secretary.

[fol. 190] Before the Interstate Commerce Commission

Petition of Respondents for Modification of Order Herein—September 7, 1950

Comes now the carriers operating within the State of Florida, respondents in the above entitled proceeding, and by C. A. Spaninger, Publishing Agent of the Southern Freight Tariff Bureau, their Agent, respectfully petition the Interstate Commerce Commission to modify and amend the order entered herein July 25, 1950, so as to permit the—

establishment, effective September 28, 1950, upon notice to the Commission and to the general public by not less than five days' filing and posting in the manner prescribed in Section 6 of the Interstate Commerce Act, of rates for the intrastate transportation of milk and cream and articles listed in the rate tariffs, as and when taking milk or cream rates, when handled in passenger service, increased as provided in the Commission's report and order and for cause shows:

Freight rates and charges have been increased in accordance with the order effective September 28, 1950, upon statutory notice, except the rates and charges on milk and cream and related articles when handled in passenger service. These latter rates and charges are published in tariffs issued by the respective passenger departments of the individual lines. Through regrettable error these milk and cream rates were completely overlooked, the passenger departments were not advised of the Commission's order and consequently have taken no action toward effecting publication in accordance therewith. This failure in pub-
[fols. 191-192] lication has just come to light, too late to effect publication effective September 28, 1950 (the final date prescribed in the order) upon statutory notice as provided in the order.

Wherefore, the premises considered, the respondents respectfully urge the Commission to modify and amend the order in Docket 30140 to permit publication of rates and charges on milk and cream and articles listed in the rate tariffs, as and when taking milk or cream rates, when handled in passenger service, in accordance with said order, effective September 28, 1950, upon five days' notice, and in view of the shortness of time remaining within which to effect publication, the undersigned, Agent for said respondents, further requests that he be telegraphed collect, as soon as conclusions have been reached.

All of which is

Respectfully submitted, ——— ———, Publishing Agent, Southern Freight Tariff Bureau, Agent for Respondents.

101 Marietta St. Bldg., Atlanta 3, Georgia.

September 7, 1950.

[fol. 193] Before the Interstate Commerce Commission

Order of Modification—September 18, 1950

Upon further consideration of the record in the above-entitled proceedings, and upon consideration of petition of respondents for modification of the order; and for good cause appearing:

It is ordered, That the order entered in said proceedings on July 25, 1950, which by its terms is made effective September 28, 1950, upon not less than 30 days' notice, be, and it is hereby, modified to become effective upon five days' notice, instead of 30 days' notice, in so far as said order requires the publication of rates and charges on milk and cream and articles listed in the rate tariffs, as and when taking milk or cream rates, when handled in passenger service.

By the Commission.

W. P. Bartel, Secretary. (Seal.)

[fol. 194] In United States District Court

Case No. 292-T-Civil

Wilbur C. King, Jerry W. Carter, and Richard A. Mack, as and constituting the Florida Railroad and Public Utilities Commission, Plaintiffs,

vs.

The United States of America, Defendant,

and

Interstate Commerce Commission, Intervening Defendant

Before: McCord, Circuit Judge, DeVane and Whitehurst, District Judges

Opinion—Filed July 17, 1951

DeVane, District Judge:

This an action brought by the Florida Railroad and Public Utilities Commission, and the members thereof, against

The United States of America, under Title 28 USC, Sec. 1336 and others, seeking to permanently enjoin, set aside and annul an order of the Interstate Commerce Commission affecting intrastate rates and charges in the State of Florida. Two short-line railroads, the Florida Citrus Commission, Growers and Shippers League of Florida and numerous shippers intervened as parties plaintiff. The Interstate Commerce Commission and all Class I railroads operating in Florida, intervened as parties defendant.

The case arises out of a report and order of the Interstate Commerce Commission (Docket #30140; 278 I. C. C., 41) entered in a case entitled "Increase in Florida Intrastate Rates." The suit is brought to enjoin and set aside the order of the Interstate Commerce Commission dated July 25, 1950, of which the report is made a part.

The order, complained of, directed the raising of rates and charges for the intrastate transportation of freight over the lines on all railroads operating in the State of Florida to correspond with increases that had theretofore been made in interstate freight rates and charges. It was made pursuant to authority vested in Interstate Commerce Commission under provisions of Section 13(3), (4) and Section 15(1) of the Interstate Commerce Act, (Title 49 USC, 13(3), (4); and 15(1). The circumstances leading to the investigation [fol. 195] by the Interstate Commerce Commission in Docket #30140 are briefly summarized below.

In a proceeding known as Ex Parte 162, *Increased Railway Rates, Fares and Charges, 1946*, 266, ICC, 537, the Interstate Commerce Commission, in response to a petition filed by all Class 1 railroads of the United States, conducted an investigation of interstate railroad freight rates and charges. Upon the showing made by the petitioning railroads of rapidly mounting operating costs and declining passenger revenue the Interstate Commerce Commission authorized a general increase of 20% in basic interstate freight rates and charge throughout the United States, with certain variations applicable to individual commodities.

Subsequently, in Ex Parte 166, *Increased Freight Rates, 1947*, 269 ICC, 33; 270 ICC, 81; 279 ICC, 93 and 270 ICC, 403, the Interstate Commerce Commission conducted a further general investigation of interstate freight rates and charges. Upon the showing made by the petitioning car-

riers of the continued increases in operating costs and declining passenger revenue, the Interstate Commerce Commission, finding the existence of an emergency, at first authorized an immediate interim increase of 10% in the intrastate freight rates and charges, with certain exceptions, which were to continue pending the completion of the investigation. (269 ICC, 33).

In the second report in this proceeding the 10% interim increase previously authorized was raised to an interim increase of 20% (270 ICC, 81). In the third report, (270 ICC, 93), the interim increases theretofore allowed were superseded by general percentage increases, varying in amounts in the different territorial divisions of the country, the increases authorized within the territory in which Florida is located being 25%, with certain variations as to particular commodities.

In the fourth and final report in this case the general increase of 25% was continued and made permanent, with various modifications and variations on individual commodities (270 ICC, 403).

The parties are not in entire agreement as to the average percentage increases allowed by the Interstate Commerce Commission in its several decisions, but the question is not of importance in the decision of this case and the percentages used above are for illustrative purposes only and fairly well represent the increases authorized.

[Vol. 196] Following the action of the Interstate Commerce Commission in Ex Parte 162 and 166, the railroads operating in Florida, (as did the railroads operating in every other State in the United States), made application to the Florida Railroad and Public Utilities Commission to authorize like increases in intrastate rates in the State of Florida. In Florida Commission Docket #1538, considering the increases granted by the Interstate Commerce Commission in its Docket #162, the Florida Commission granted the full increases requested, except that no increases were allowed on 1) logs moving to the mills, 2) wet phosphate moving from the washer to the drying plant, 3) waste wood moving to retort or recovery plant, and 4) sugar cane moving to the mills. Also increases on pulpwood were limited to 9%.

In Docket #1466, by a series of orders, the Florida Com-

mission dealt with applications of the rail lines for general increases similar to those embraced in the Interstate Commerce Commission Ex Parte #166 proceeding.

In Order #1466(A), the Florida Commission granted the full 20% increases in effect at that time (April 9, 1948) under orders of the Interstate Commerce Commission in its Docket Ex Parte #166, with the following exceptions:

1. No increases were allowed on protective services.
2. No increases were allowed on waste wood to Pensacola, Fla.
3. No increases were allowed on sugar cane from the fields to the mill in Clewiston, Florida.
4. No increases were allowed on fertilizer and fertilizing material.
5. Increases on road aggregates were limited to 10%.
6. Increases on class rates and rates made in relation thereto were limited to 10.25%.

In the #1466(C) Order, the Florida Commission continued the 20% increases granted in its Order #1466(A) until July 1, 1949, retaining in effect the same exceptions above mentioned. By Order #1466(D) these increases and exceptions were continued in effect until after the disposition of Docket #30140 by the Interstate Commerce Commission.

Thus, the record in this case shows that in Florida, on intrastate traffic, the Florida Commission granted the rail [fol. 197] lines the same increases in freight rates as were granted by the Interstate Commerce Commission in Dockets, Ex Parte #162 and #166, with the exception of the 5% granted by the Interstate Commerce Commission in Ex Parte #166 and the commodity and class rate exceptions hereinbefore enumerated.

The case instituted by the carriers before the Interstate Commerce Commission (Docket #30140) was for the purpose of securing an order of the Interstate Commerce Commission authorizing the carriers to also put into effect the increases in rates approved by the Interstate Commerce Commission for interstate traffic, but disapproved by the Florida Commission on intrastate traffic.

Since the Interstate Commerce Commission issued its

order making the full interstate rates prescribed by it effective on intrastate traffic in Florida, certain changes have been made in rates applicable to road aggregates, waste wood, sugar cane, fertilizer and fertilizing materials, the latter applicable only on the Florida East Coast Railroad. Otherwise, rates prescribed by the Interstate Commerce Commission, for interstate traffic, have also been made effective by the Interstate Commerce Commission for the movement of intrastate traffic in Florida.

The respective parties to this suit appear to be in accord on the proposition that the Interstate Commerce Commission heard and determined Ex Parte #162 and #166 primarily as revenue cases. They also appear to be in accord that the carriers are making substantial profits out of their over-all freight services and that, considered alone, increases in freight rates would not have been justified on the ground that the carriers needed additional revenue to pay the costs of rendering freight services and a fair return on the carriers' property devoted to such services. The parties are further in accord that the carriers are sustaining heavy losses resulting from passenger operations. Moreover, the evidence before the Interstate Commerce Commission in this case clearly establishes these facts. We conclude from this evidence that the increases in rates authorized by the Interstate Commerce Commission, in Docket #30140, were authorized chiefly because of losses resulting from passenger operations. Increased labor costs accounted for some increased expenses of the carriers, but the principal losses being incurred arose out of passenger operations.

The question, therefore, before the court is—may the [fol. 198] Interstate Commerce Commission increase freight rates generally to enable the carriers to meet deficits incurred from passenger operations?

Plaintiffs contend this may not be done; that every branch of the service must contribute its proper share of the costs of operation and return on the property devoted to each class of service. They rely upon the 5% Case, 31 ICC, 351, Northern Pacific Railway v. North Dakota, 236 U. S., 585, Norfolk & Western Railway v. West Virginia, 336 U. S., 605, and other cases to the same effect.

The cases relied upon by plaintiffs to support this proposition were decided prior to 1940 when the Interstate Com-

merce Act was amended by including therein the National Transportation Policy, which the Interstate Commerce Commission was directed to follow in prescribing rates and charges on all modes of transportation subject to the provisions of the Act, 49 USC, 4281. In Railroad Commission v. Chicago, B & Q Railroad Company, 257 U. S., 563, and again in Florida v. U. S., 292 U. S. 1, the Supreme Court of the United States held that the Transportation Act, 1920, imposed an affirmative duty on the Interstate Commerce Commission "to fix rates and to take other important steps to maintain an adequate railway service for the people of the United States." *Id.*, again in North Carolina v. United States, 325 U. S., 507, the Supreme Court re-affirmed these earlier holdings and held that where intrastate traffic was not contributing its fair share of the revenue required to enable the carriers to render adequate and efficient transportation service an order of the Interstate Commerce Commission directing an increase in intrastate rates, for such purpose, would be valid, if supported by evidence justifying the order.

Relying upon these decisions of the Supreme Court of the United States, this court finds and holds that the Interstate Commerce Commission, in this case, had the authority to enter the order here questioned for the purpose of providing the carriers with needed revenue, even though freight rates were increased beyond the point where such rates provided more revenue than was required to pay the costs for rendering freight services and a fair return on carriers' property devoted to such services.

Plaintiffs contend that should the court find that the Interstate Commerce Commission is vested with authority to increase freight rates, generally, to enable the carriers to meet deficits from passenger operations, nevertheless, the order of the Interstate Commerce Commission, in this [fol. 199] case, does not comply with all the requirements laid down by the Supreme Court of the United States in North Carolina v. United States, supra. We think it does.

While it is doubtful if the order of the Interstate Commerce Commission, in Docket #30140, could be sustained, on the grounds that the action of the Florida Commission resulted in undue and unreasonable advantage, preference of prejudice, as between persons and localities, in intra-

state commerce in Florida on the one hand and interstate commerce on the other (Florida v. U. S., 282 U. S., 194), yet, it is clear from the evidence in the case that it did result in undue, unreasonable and unjust discrimination against against interstate commerce and undue preference as to intrastate commerce, in violation of Section 13(4) of the Interstate Commerce Act, in that it failed to place upon intrastate commerce the burden cast upon such commerce, by the order of the Interstate Commerce Commission, entered in Ex Parte #162 and #166, which was intended to provide needed revenue from both intrastate and interstate commerce, to meet the money requirements of the carriers. The Interstate Commerce Commission found, in this case, that failure of the Florida Commission to authorize increases in the rates in question, resulted in a loss of, at least $915,325.00 per annum to the carriers. And, as evidence of the need for this revenue, counsel for the Florida Commission stated, on oral argument, and in their brief, that the three major railroads operating in Florida sustained deficits from passenger operations of $21,000,000.00, for the year, 1948, the last full year's operations involved in this case.

The intervening plaintiffs interested in specific rates involved in this case attacked the validity of the order of the Interstate Commerce Commission on the ground that the rates prescribed are so high that the carriers, in fact, lost revenue instead of gained revenue, which was the sole purpose of the increases in rates and the purpose sought to be accomplished failing, the order prescribing the rates is illegal. They introduced evidence before the Interstate Commerce Commission supporting their contention. The carriers introduced evidence denying the claims of the shippers. The Interstate Commerce Commission considered all this evidence and, after weighing it, decided against the intervening plaintiffs. This court does not have the authority to over-ride the decision of the Interstate Commerce Commission on this factual question, supported by [fol. 200] evidence as it is in this record, Ohio v. U. S., 292 U. S., 498.

Plaintiffs contend further that conceding the power of the Interstate Commerce Commission to increase freight rates, solely for the purpose of obtaining needed additional reve-

nue to meet passenger deficits, yet every shipper affected by such order had the right to put in issue before the Interstate Commerce Commission, and put in issue before this court, the reasonableness of any specific rate applicable to any particular commodity.

The court is cited to and finds no authority that sustains this contention of the intervening plaintiffs. Moreover, if they were right in their contention the effect would be to nullify the Declared Policy of Congress, incorporated in the Interstate Commerce Act.

Since the Interstate Commerce Commission has been vested with the power to increase freight rates, generally, to give carriers needed additional revenue, increases of this character, in fairness to all, should be made to apply to intrastate as well as interstate commerce, otherwise unjust discrimination would exist between such commerce.

If the intervening plaintiffs are entitled to relief in so far as any specific individual rate is concerned he may take his case to the Interstate Commerce Commission and there secure any modification to which he is entitled. In North Carolina v. United States, supra, the Supreme Court, on this point, said: "The very nature of such a broad general order requires that it contain a saving clause for future modification and adjustment of particular rates." This saving clause was incorporated in the order of the Interstate Commerce Commission in this case and certain of the rates incorporated in the original order entered by the Interstate Commerce Commission have already been modified or removed from the order and the court has no doubt that in the future additional modifications may be made where they are justified by the facts.

We conclude that the order of the Interstate Commerce Commission should be sustained.

Dated at Tallahassee, Florida, this 29th day of June, 1951.

(S.) Leon McCord, Circuit Judge. (S.) Dozier A. DeVane, District Judge. (S.) George W. Whitehurst, District Judge.

[fol. 201] IN UNITED STATES DISTRICT COURT

Case No. 292-T-Civil

WILBUR C. KING, JERRY W. CARTER and RICHARD A. MACK, as and Constituting the Florida Railroad and Public Utilities Commission, Plaintiffs,

vs.

THE UNITED STATES OF AMERICA, Defendant

and

INTERSTATE COMMERCE COMMISSION, Intervening Defendant

FINAL JUDGMENT—Filed July 17, 1951

This cause came on for final hearing before a Court consisting of Honorables Leon McCord, Circuit Judge, Dozier A. DeVane and George W. Whitehurst, District Judges.

Evidence was presented and arguments heard, and, for reasons stated in an Opinion filed herewith, it is considered, Ordered and Adjudged that the relief sought by plaintiffs herein be and the same is hereby denied; that plaintiffs take nothing by this suit and defendants go hence without day. The costs of this case shall be taxed by the Clerk upon an appropriate bill filed therefor against the Florida Railroad and Public Utilities Commission, plaintiff.

Done and Ordered at Jacksonville, Florida, this 16th day of July, 1951.

(S.) Leon McCord, Circuit Judge. (S.) Dozier A. DeVane, District Judge. (S.) George W. Whitehurst, District Judge.

[fol. 202] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR APPEAL—Filed September 7, 1951

Considering themselves aggrieved by the final decree and judgment of this Court entered on July 17, 1951, Wilbur C. King, Jerry W. Carter, and Richard A. Mack, as and con-

stituting the Florida Railroad and Public Utilities Commission, Plaintiffs herein, do hereby pray that an appeal be allowed to the Supreme Court of the United States from said final decree and judgment and from each and every part thereof; that citation be issued in accordance with law; that an order be made with respect to the appeal bond to be given by said Plaintiffs and that the amount of security to be fixed by the order allowing the appeal, and the material parts of the record; proceedings and papers upon which said final judgment and decree was based, duly authenticated, be sent to the Supreme Court of the United States in accordance with the rules in such case made and provided.

Respectfully submitted, (S.) Lewis W. Petteway,
Counsel for Plaintiffs.

[fol. 203] In United States District Court

[Title omitted]

Assignment of Errors and Prayer for Reversal—Filed September 7, 1951

Wilbur C. King, Jerry W. Carter, and Richard A. Mack, as and constituting the Florida Railroad and Public Utilities Commission, Plaintiffs herein, in connection with their appeal to the Supreme Court of the United States hereby file the following assignment of errors upon which they will rely in their prosecution of said appeal from the final judgment of the District Court entered on July 17, 1951.

The District Court erred:

1. In finding and holding that the Interstate Commerce Commission had authority, in this case, to enter an order requiring the railroads to increase Florida intrastate freight rates generally to enable said carriers to meet deficits incurred from their passenger operations;

[fol. 204] 2. In finding and holding that intrastate shippers and receivers of freight can be required lawfully to pay excessive and unreasonably high freight rates in order that the railroads may be able to recoup losses sustained through the operation of their passenger service;

3. In finding and holding that the order of the Interstate Commerce Commission, in this case, is based on adequate findings supported by evidence;

4. In concluding that the order of the Interstate Commerce Commission should be sustained; and

5. In denying the relief sought by plaintiffs in this proceeding.

Wherefore, Plaintiffs Wilbur C. King, Jerry W. Carter, and Richard A. Mack, as and constituting the Florida Railroad and Public Utilities Commission, pray that the final judgment of the District Court be reversed, and for such other relief as the Court may deem fit and proper.

(S.) Lewis W. Petteway, Counsel for Plaintiffs.

[fol. 205] IN THE UNITED STATES DISTRICT COURT

[Title omitted]

ORDER ALLOWING APPEAL—Filed September 7, 1951

Wilbur C. King, Jerry W. Carter, and Richard A. Mack, as and constituting the Florida Railroad and Public Utilities Commission, Plaintiffs herein, having made and filed their petition praying for an appeal to the Supreme Court of the United States from the final judgment and decree of this Court in this cause entered on July 17, 1951, and from each and every part thereof, and having presented their assignment of errors and prayer for reversal and their statement as to the jurisdiction of the Supreme Court of the United States on appeal, pursuant to the statutes and rules of the Supreme Court of the United States in such cases made and provided;

Now therefore, it is hereby ordered that said appeal be and the same is hereby allowed as prayed for.

[fols. 206-206a] It is further ordered that the amount of the appeal bond be and the same is hereby fixed in the sum of $1,000.00 with good and sufficient surety, and shall be conditioned as may be required by law.

It is further ordered that citation shall issue in accordance with law.

Done and ordered this 7th day of September, 1951.

(S.) Dozier A. DeVane, District Judge.

[fols. 206b-206e] Citation in usual form showing service on George Earl Hoffman omitted in printing.

[fols. 206f-206h] Supplemental Citation in usual form showing service on James A. Bistline and Frank W. Gwathmey omitted in printing.

[fol. 207] IN UNITED STATES DISTRICT COURT

[Title omitted]

Filed September 14, 1951

To the Clerk of the above named Court:

You will please prepare a transcript of the record in the above entitled cause to be transmitted to the Clerk of the Supreme Court of the United States and include in said transcript the following:

1. Complaint.
2. Answer of The United States of America.
3. Answer of the Interstate Commerce Commission.
4. Answer of Atlantic Coast Line Railroad Company and Other Railroads Operating in Florida.
5. Order Designating Judges to Compose Three-Judge Court.
6. Transcript of the Final Hearing on May 1, 1951 before the Three-Judge Court, including such Evidence as was Received at said Hearing by said Court but excluding the Argument of Counsel.

[fol. 208] As a part of such evidence include:

(a). The original certified copy of the transcript of the stenographer's notes of the hearing held June

28, 29 and [redacted] and July 1 and 2, 1949 in Docket No. 30140 of the Interstate Commerce Commission,

(b) The original certified copies of Exhibits 1 to 171, inclusive, in said Hearing in said Docket No. 30140, and

(c) The original certified copy of the transcript of the stenographer's notes of the oral argument on April 11, 1950 in said Docket No. 30140

7. Opinion Delivered by Three-Judge Court.
8. Final Judgment of Three-Judge Court.
9. Petition for Appeal.
10. Assignment of Errors and Prayer for Reversal.
11. Jurisdictional Statement.
12. Order Allowing Appeal.
13. Citation on Appeal.
14. Statement Directing Attention to Paragraph 3 of Rule 12 of the Rules of the Supreme Court of the United States.
15. Acceptance of Service filed September 12, 1951, by the Defendant-Appellee, The United States of America, by the United States Attorney, Northern District of Florida, of copies of Petition for Appeal and other Papers Described in said Acceptance of Service.

[fol. 209] 16. Acceptance of Service by the Defendant-Appellee, The United States of America, by the Attorney General of the United States, of copies of Petition for Appeal and other Papers Described in said Acceptance of Service.

17. Acceptance of Service by Intervening Defendant-Appellee, Interstate Commerce Commission, of copies of Petition for Appeal and other Papers Described in said Acceptance of Service.

18. Supplemental Citation on Appeal to the Intervening Railroad Defendants-Appellees as follows:

Atlantic Coast Line Railroad Company;
Atlanta & Saint Andrews Bay Railway Company;
Florida East Coast Railway Company (Scott M. Loftin and John W. Martin, Trustees);
Georgia & Florida Railroad (Alfred W. Jones, Receiver);
Georgia Southern and Florida Railway Company;

Louisville and Nashville Railroad Company;
St. Louis-San Francisco Railway Company;
Seaboard Air Line Railroad Company;
Southern Railway Company.

19. Supplemental Statements Directing Attention of said Intervening Railroad Defendants-Appellees to Paragraph 3 of Rule 12 of the aforesaid Rules.

20. Acceptance of Service by said Intervening Railroad Defendants-Appellees of copies of Petition for Appeal and other Papers Described in said Acceptance of Service.

21. This Praecipe, and Proof of Service of copies thereof on counsel for the above named Defendant-Appellee and Intervening Defendants-Appellees.

22. Motion to Have Certain Original Records Transmitted to the Clerk of the Supreme Court.

[fol. 210] 23. Order that Certain Original Records be forwarded to the Supreme Court.

(S.) Lewis W. Petteway, Attorney for Plaintiffs-Appellants.

September 14, 1951.

[fol. 211] IN UNITED STATES DISTRICT COURT

[Title omitted]

MOTION TO HAVE CERTAIN ORIGINAL RECORDS IN THE DISTRICT COURT TRANSMITTED TO THE CLERK OF THE SUPREME COURT OF THE UNITED STATES—Filed September 14, 1951.

Plaintiffs-appellants in the above entitled cause petition the Court, pursuant to Rule 10, paragraph (4) of the Rules of the Supreme Court of the United States, to authorize and instruct the Clerk of this District Court to transmit as a part of the record on appeal to be filed in the Supreme Court of the United States, the documents hereinafter described:

1. The original certified copy of the transcript of the stenographer's notes of the hearing held June 28, 29

and 30 and July 1 and 2, 1949 in Docket No. 30140 of the Interstate Commerce Commission,

2. The original certified copies of Exhibits 1 to 171, inclusive, in said hearing in said Docket No. 30140, and

3. The original certified copy of the transcript of the stenographer's notes of the oral argument on April 11, 1950 in said Docket No. 30140,

all of which said documents were received in evidence on May 1, 1951 upon the final hearing of the above entitled cause.

[fol. 212] As grounds for this petition plaintiffs-appellants represent that there are only originals of said documents which must be transmitted to the Supreme Court; that a great deal of expense and work would be required to prepare copies thereof for the transcript of record on appeal, and that such expense and work can be obviated by the granting of this petition.

(S.) Lewis W. Petteway, Attorney for Plaintiffs-Appellants.

September 13, 1951.

[fol. 213] In United States District Court

[Title omitted]

Order That Certain Original Records be Forwarded to Supreme Court—Filed September 14, 1951

In accordance with the provisions of the praecipe herein, and pursuant to the motion of plaintiffs-appellants to transmit the documents hereinafter described as a part of the record on appeal of the above entitled cause to the Supreme Court of the United States:

1. The original certified copy of the transcript of the stenographer's notes of the hearing held June 28, 29 and 30 and July 1 and 2, 1949 in Docket No. 30140 of the Interstate Commerce Commission,

2. The original certified copies of Exhibits 1 to 171, inclusive, in said hearing in said Docket No. 30140, and

3. The original certified copy of the transcript of the stenographer's notes of the oral argument on April 11, 1950 in said Docket No. 30140.

It is hereby ordered, that said documents received in evidence in the District Court on May 1, 1951 upon the final [fol. 214] hearing of this cause may be forwarded, in lieu of copies of said documents, to the Clerk of the Supreme Court of the United States as a part of the transcript of the record on the appeal herein.

(S.) Dozier A. DeVane, District Judge.

September 14, 1951.

[fol. 215] In United States District Court

[Title omitted]

Motion for Extension of Time for Docketing and Filing of Record—Filed October 16, 1951

Comes now Wilbur C. King, Jerry W. Carter, and Richard A. Mack, as and constituting the Florida Railroad and Public Utilities Commission, plaintiffs-appellants herein, and respectfully move the court for an extension of time for docketing and filing transcript of record in this proceeding with the Clerk of the Supreme Court of the United States, and as grounds for said motion state that said transcript of record is quite lengthy and its preparation cannot now be completed before the time for filing the same has expired, that is to wit: on Wednesday, October 17, 1951, particularly in view of the fact that counsel for plaintiffs-appellants herein has been unable, because of illness and resulting [fol. 216] absence from the office, to supervise the preparation of said transcript.

Wherefore, plaintiffs-appellants move the Court to extend time for docketing and filing said transcript of record from October 17, 1951, to and including November 19, 1951.

Respectfully submitted, (S.) Lewis W. Petteway, Attorney for Plaintiffs-Appellants.

[fol. 217] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER EXTENDING TIME FOR DOCKETING AND FILING TRANSCRIPT OF RECORD—Filed October 16, 1951

This cause coming on this day to be heard upon the motion of plaintiffs-appellants for extension of time for docketing and filing transcript of record herein with the Clerk of the Supreme Court of the United States and the Court being fully advised in the premises, it is, therefore, in consideration thereof ordered that the time for docketing the appeal and filing transcript of record with the Clerk of the Supreme Court of the United States be and the same is hereby extended to and including November 19, 1951.

(S.) Dozier A. DeVane, District Judge.

[fol. 218] IN UNITED STATES DISTRICT COURT

[Title omitted]

SUPPLEMENTAL PRAECIPE—October 19, 1951

To the Clerk of the above named Court:

You will please include in the transcript of record in the above entitled cause to be transmitted to the Clerk of the Supreme Court of the United States the following additional pleadings which have been filed subsequent to the filing of the original Praecipe herein on September 14, 1951 as follows:

1. Motion to Affirm filed by Intervening Defendants, Atlantic Coast Line Railroad Company and other railroads.

2. Motion to Affirm filed by the United States of America and the Interstate Commerce Commission.

3. Motion for Extension of Time for Docketing and Filing Record.

[fols.219-219a] 4. Order Extending Time for Docketing and Filing Record.

5. Supplemental Praecipe and Proof of Service of copies thereof.

(S.) Lewis W. Petteway, Attorney for Plaintiffs-Appellants.

[fol. 219b] Clerk's Certificate to foregoing transcript omitted in printing.

[fols. 220-221] Secretary's certificate (omitted in printing).

[fol. 222] BEFORE THE INTERSTATE COMMERCE COMMISSION

Ocean Room,
Sheraton Plaza Hotel,
Daytona Beach, Florida,
Tuesday, June 28, 1949.

Transcript of Hearing

Met pursuant to notice at 9:30 o'clock a.m.

Before William J. Patterson, Commissioner; G. H. Mattingly, Examiner

APPEARANCES

Frank W. Gwathmey, 110 Shoreham Building, Washington, D. C., appearing for respondent railroads.

James A. Bistline, Southern Railway Building, Washington, D. C., appearing for Southern Railway System and Georgia Southern and Florida Railway Company, Respondents.

E. C. Hicks, Jr., Atlantic Coast Line Railroad, Wilmington, N. C., appearing for the Atlantic Coast Line Railroad, Respondent.

M. W. Wells, P. O. Box 633, Orlando, Florida, appearing for Florida Citrus Commission and Growers & Shippers League of Florida, Protestants.

F. C. Hillyer, 227 West Forsyth Street, Jacksonville, [fol. 223] Florida, appearing for East Florida Pulp and Paper Mills, Florida Millwork Association, Florida Rate

Conference, Jacksonville Traffic Bureau and United States Sugar Corporation, Protestants.

F. E. Harrison, Jr., P. O. Box 840, Tallahassee, Florida, appearing for the Board of Commissioners of State Institutions, State Road Department, Dixie Lime Products Company, Dolomite Products, Inc., Protestants.

Arthur L. Winn, Jr., Investment Building, Washington 5, D. C., appearing for International Paper Company and St. Regis Paper Company, Protestants.

Fred Pettijohn, Tallahassee, Florida, appearing for the Florida Railroad and the Public Utilities Commission, Protestants.

Fred McMullen, Tallahassee, Florida, appearing for Florida Railroad and Public Utilities Commission, Protestants.

Lewis Petteway, Tallahassee, Florida, appearing for Florida Railroad and Public Utilities Commission, State of Florida and representing the Attorney General of the State of Florida, Protestants.

W. H. Backer, 122 East 42nd Street, New York 17, N. Y., appearing on behalf of Rayonier Inc., Protestants.

R. J. Healey, Fort Lauderdale, Florida, Broward County Traffic Association and Florida Rate Conference, Protestants.

B. H. Overton, Traffic Bureau, Chamber of Commerce, St. Petersburg, Florida, appearing for the Florida Rate [fols. 224-225] Conference, Traffic Bureau, Chamber of Commerce of St. Petersburg, Florida, Protestants.

T. C. Maurer, 227 West Forsyth Street, Jacksonville, Florida, appearing for Jacksonville Traffic Bureau, National Container Corporation, Florida Lumber and Millwork Association and Citrus Processors Association, Protestants.

W. W. Balkcom, Tampa, Florida, appearing for the Tampa Traffic Association, Protestants.

A. M. Ribe, 912 South Twenty-first Street, Birmingham, Alabama, appearing for Newport Industries, Inc., Protestants.

Mr. M. D. Malmend, 220 East Forty-second Street, New York 17, N. Y., appearing for the Hudson Pulp & Paper Corporation, Protestants.

D. S. Browder, 60 East Forty-second Street, New York

17, N. Y., appearing for the Pennsylvania-Dixie Cement Corporation, Protestants.

G. R. Gordon, 38 South Dearborn Street, Chicago, Illinois, appearing for the Container Corporation of America, Protestants.

Thomas E. Grady, 827 DuPont Building, Miami, Florida, appearing for Greater Miami Traffic Association, Hector Supply Company and Florida Rate Conference, Protestants.

[fol. 226] Proceedings

Comm. Patterson: The Interstate Commerce Commission has assigned for hearing at this time and place Docket No. 30140, Increases in Florida Intrastate Rates. This is an investigation, instituted upon a petition of the rail carriers operating to, from, and within the State of Florida, with respect to the rates and charges for the intrastate transportation of property in Florida which are held to their present level by the refusal of the Florida Railroad & Public Utilities Commission to permit increases thereof, corresponding to the increases approved by this Commission on interstate traffic in Ex Parte 148, 162 and 166. The purpose of this proceeding is to determine whether the intrastate rates and charges referred to cause any undue or unreasonable advantage, preference or prejudice as between persons or localities in intrastate commerce, on the one hand, and interstate or foreign commerce, on the other hand, or any undue, unreasonable or unjust discrimination against interstate or foreign commerce.

The parties will please announce their appearances for the record,—respondents first.

Mr. Gwathmey: Frank W. Gwathmey, 110 Shoreham Building, Washington 5, D. C., appearing on behalf of the respondent railroads generally.

Mr. Bistline: James A. Bistline, Southern Railway Build-
[fol. 227] ing, Washington, D. C., appearing for the Southern Railway System and the Georgia Southern and Florida Railway Company.

Mr. Hicks: E. C. Hicks, Jr., Atlantic Coast Line Railroad, Wilmington, N. C., appearing for the Atlantic Coast Line Railroad.

Comm. Patterson: Are there any others appearing for the respondents? Other appearances?

Mr. Petteway: Mr. Fred Pettijohn, Fred McMullen and Lewis Petteway, all of Tallahassee, Florida, appearing for the Florida Railroad and Public Utilities Commission, and Lewis Petteway appearing also for the State of Florida and for Richard Irwin, Attorney General of the State of Florida.

Mr. Hillyer: F. C. Hillyer, 227 West Forsyth Street, Jacksonville, Florida, appearing for East Florida Pulp and Paper Mills, Florida Millwork Association, Florida Rate Conference and Jacksonville Traffic Bureau and the United States Sugar Corporation.

Mr. Wells: M. W. Wells, P. O. Box 633, Orlando, Florida, appearing for the Florida Citrus Commission and Growers and Shippers League of Florida.

Mr. Harrison, Jr.: Frank E. Harrison, Jr., Tallahassee, Florida, appearing for the Board of Commissioners of State Institutions, State Road Department, Dixie-Lime Products Company and Dolomite Products, Inc., of Ocala.

Mr. Winn: Arthur L. Winn, Jr., Investment Building, [fol. 228] Washington, 5, D. C., appearing for International Paper Company and St. Regis Paper Company.

Mr. Overton: B. H. Overton, Traffic Bureau, Chamber of Commerce, St. Petersburg, Florida, appearing for the Florida Rate Conference and the Traffic Bureau of St. Petersburg.

Mr. Grady: Thomas E. Grady, 827 DuPont Building, Miami, Florida, Greater Miami Traffic Association, Hector Supply Company and Florida Rate Conference. I am a registered practitioner.

Mr. Maurer: T. C. Maurer, 227 West Forsyth Street, Jacksonville, Florida, appearing for Jacksonville Traffic Bureau, National Container Corporation, Florida Lumber and Millwork Association and Citrus Processors Association.

Mr. Balkcom: W. W. Balkcom, appearing for the Tampa Traffic Association, Tampa, Florida.

Mr. Gordon: G. R. Gordon, 38 South Dearborn Street, Chicago 3, Illinois, appearing for the Container Corporation of America.

Mr. Browder: D. S. Browder, 60 East Forty-second Street, New York 17, N. Y., appearing on behalf of the Pennsylvania-Dixie Cement Corporation.

Mr. Malmend: M. D. Malmend, 220 East Forty-second

Street, New York 17, N. Y., Hudson Pulp and Paper Corporation.

Mr. Healey: R. J. Healey, Fort Lauderdale, Florida, [fol. 229] appearing for the Broward County Traffic Association and Florida Rate Conference.

Mr. Ribe: A. M. Ribe, 912 South Twenty-first Street, Birmingham, Alabama, appearing for the Newport Industries, Pensacola, Florida. I am a registered practitioner.

Comm. Patterson: Any others?

Mr. Backer: W. H. Backer, 122 East Forty-second Street, New York 17, N. Y., appearing for Rayonier Inc., Fernandina, Florida.

Comm. Patterson: Are there any other appearances? You gentlemen that haven't already done so, if you will file appearance blanks.

The respondents may proceed.

COLLOQUY

Mr. Petteway: Mr. Commissioner, on behalf of the Florida Commission, may I make a motion just before they proceed? I move you that all matters relating to increased freight rates, 1948, that is Ex Parte 168, be excluded from this record. That is similar to the request made by the Tennessee Commission, which was granted, and in view of the fact that the Ex Parte 128 has not been presented to the Florida Commission, we make that request.

Mr. Gwathmey: We understand, Mr. Commissioner, that Ex Parte 128 increases in no way are involved in this present prelude proceeding.

Comm. Patterson: Well, the Commission haven't acted on [fol. 230] 168 yet.

Mr. Gwathmey: The part of the investigation instituted by the Commission in this case and the carriers' petition for the investigation do not include 168 increases, as I understand.

Comm. Patterson: Well, the notice of hearing didn't include No. 168.

Mr. Gwathmey: Correct.

Comm. Patterson: So 168 just isn't involved in this proceeding.

Mr. Petteway: There is no objection to my motion, I take it?

Comm. Patterson: Proceed, Mr. Gwathmey:

Mr. Gwathmey: Mr. Commissioner and Mr. Examiner, the carriers printed petition, dated December 3, 1948, in response to which the Interstate Commerce Commission instituted this investigation, has attached to it as an appendix copies of the several orders of the Florida Railroad Commission which are here involved. The orders are quite long and complicated and it seemed to us unnecessary to have them copied for the purpose of filing them as exhibits, when they are already a part of this petition. Therefore, with Your Honors' approval, I will ask that the petition dated December 3, 1948, be considered as a part of the record, not as evidence of any facts that are set out in the [fol. 231] petition just merely for the purpose of establishing that the petition was filed and that the orders of the Florida State Commission about which we are here complaining are set out in that petition and we want them considered as a part of this record.

Comm. Patterson: If there is no objection, it will be done.

Mr. Petteway: The only objection we've got to that is that they have not included all the Florida orders that have to do with this subject matter, Order 1466-A, B and C, and they have only included C and we would have no objection if they would include all of them.

Comm. Patterson: There is no objection to your putting in those that haven't been included if you care to.

Mr. Gwathmey: The C, as I understand it, is the one now in effect. On the date of June 17, 1949, the Florida Railroad and Public Utilities Commission issued its order Number 1547 and Docket No. 2691 wherein the Commission grants a petition or application filed by the carriers and establishes a revised and generally reduced scale of rates on sand, gravel and related articles commonly referred to as road aggregates. The scale that has been allowed by the Florida Commission is not in all respects in precisely the state which the carriers would like to have it, but be that as it may, the order has been entered in response to [fol. 232] the carriers' petition and this scale is the same

scale which has been agreed upon, as I understand, by the shippers and the railroads throughout the south generally, and it is the railroads' purpose to make it effective both intrastate and interstate throughout the South.

Under those conditions, we no*t* ask that the order of investigation in this case be amended so as to exclude commodities to which I have just referred from the investigation.

Mr. Petteway: Mr. Gwathmey, we have no objections to that being excluded, but we want to reserve the right to cross examine his witnesses with reference to the reason why they are excluded. Now, I don't anticipate that we'd be, if this is granted at this time, that we would be cut out of that cross examination.

Mr. Gwathmey: We do not intend to put in any evidence in this record in respect to rates on road aggregates.

Mr. Patterson: There being no objection, this order will be excluded subject to any cross examination that may be necessary.

Mr. Gwathmey: Shall I proceed?

Comm. Patterson: Proceed.

Mr. Gwathmey: On behalf of the Florida East Coast Railway Company, I now wish to say that I have been instructed to ask that the rates of that Company on fertilizers [fol. 233] and fertilizer materials as applicable between points on its line be excluded from this investigation since the Florida East Coast Railway is not seeking any increases in those rates.

I may state in explanation that the rates of the Florida East Coast Railway on fertilizer and fertilizer materials are now on a higher basis than the rates applicable on other railroads in Florida. The Florida East Coast Railway feels that a further increase in its rates on fertilizer and fertilizer materials would cause a diversion of the traffic from the railroad and it does not desire to have those rates increased as a result of the order in this proceeding.

Comm. Patterson: If there is no objection, it will be done.

Mr. Wells: May I inquire whether the order of the Florida East Coast Railway also applies to any origination or termination on Florida East Coast?

Mr. Gwathmey: Between points on the Florida East Coast Railway only.

Mr. Petteway: We take the same position on that we do to road aggregates.

Comm. Patterson: You may proceed.

E. B. Rush was sworn and testified as follows:

[fol. 234] Direct examinatoin.

By Mr. Gwathmey:

Q. Please state your name, residence and railroad position?

A. E. B. Rush; General Superintendent, Southern Division, Atlantic Coast Line Railroad Company, Jacksonville, Florida. Residence, 2735 St. Johns Avenue, Apartment 4, Jacksonville, Florida.

Q. Over what portion of the Atlantic Coast Line system do you have jurisdiction?

A. The entire State of Florida, the line extending from Savannah, Georgia, to Montgomery, Alabama, via Waycross; the line, Jessup to Jacksonville; Folkston to Waycross; Brunswick to Albany via Waycross; Albany to Thomasville; Dupont to High Springs; Climax to Chattahoochee; Abbeville, Luverne and Elba Branches in Alabama.

Q. What is the nature of your duties?

A. I have jurisdiction and am responsible for all operating matters on the Southern Division.

Q. Outline briefly your experience in railroad transportation matters?

A. I entered the service of the Atlantic Coast Line Railroad on May 1, 1899, and positions held in the Transportation Department have been as follows: Telegraph operator, train dispatcher, chief train dispatcher, terminal trainmaster, trainmaster, superintendent, superintendent of [fol. 235] transportation, general superintendent. I was appointed Superintendent of Transportation, Southern Division, Atlantic Coast Line on July 1, 1940 and served until April 28, 1949, at which time I was appointed General Superintendent of the same division. During my railroad career I have had experience with every phase of the Trans-

portation Department, from a local, district and division standpoint.

Q. What is the total mileage of the Atlantic Coast Line System and how much of that mileage is located in the State of Florida?

A. The system mileage is 5,525.82, of which 1,914.71 is located in Florida.

Q. In what states other than Florida does the Coast Line operate?

A. Virginia, North Carolina, South Carolina, Georgia, and Alabama.

Q. From the standpoint of the amount of service and the expense thereof, how does the transportation of intrastate freight traffic within Florida compare, generally speaking, with the transportation of interstate traffic moving between Florida and other states?

A. I have found in my experience that the handling of intrastate traffic within the State of Florida, is far less favorable than the handling of interstate.

Mr. Petteway: May I ask him one question before he [fol. 236] proceeds with that? I don't believe he has testified concerning his knowledge of transportation conditions in the other states.

Mr. Gwathway: I didn't ask him anything about that. I asked him transportation between Florida and other states. Does that satisfy you?

Mr. Petteway: Yes.

By Mr. Gwathmey:

Q. Did you answer the question, Mr. Rush?

A. I found in my experience that the handling of intrastate traffic within the State of Florida, is far less favorable than the handling of interstate traffic.

Q. Do the same trains ordinarily handle interstate and intrastate traffic, the two kinds of traffic to that extent receiving the same service?

A. Yes, sir.

Q. Is the preponderance of the intrastate traffic handled in local or through trains, and how does it compare in this respect with interstate traffic; and in answering, can you give some typical illustrations?

A. Generally speaking, the majority of interstate cars are handled in through freight trains and the majority of intrastate cars are handled on local freight trains. Our local freight service is far more expensive to us due to the crews receiving higher wages, and also the amount of over-[fol. 237] time earned by these crews as compared with that earned by through freight crews.

We selected two or three segments of the line in Florida to show the percentage of intrastate cars handled on local freights and percentage of interstate cars handled on through freights. Local Freight Train 533, operating between Jacksonville and Sanford, during the period March 13 to 21, inclusive, 1949, handled 127 intrastate cars and 51 interstate cars. The percentage of intrastate cars was 71.3 and the percentage of interstate cars was 28.7. Through freight train 209, operating between the same points, during the same period, handled 55 intrastate and 106 interstate cars. The percentage of intrastate cars being 34.1 and the percentage of interstate cars was 65.9.

Between Tampa and Sarasota, local freight train 565, during period March 13 to 21, inclusive, 1949, handled 175 intrastate cars and only four interstate cars. The percentage of intrastate traffic being 97.8 and interstate traffic 2.2.

Between High Springs and Tampa our through freight train 219, during period March 13 to 21, inclusive, 1949, handled five intrastate cars and 146 interstate cars, or 96.7 per cent of the traffic handled was interstate and only 3.3 per cent, intrastate. Northbound, between Tampa and High Springs, during this same period, our through freight [fol. 238] train 220 handled eight intrastate cars and 307 interstate cars, the percentage being 97.6 interstate and 2.4 intrastate.

You can see from the above that the preponderance of intrastate traffic moves in local freight service.

Q. Mr. Rush, in your discussion of freight train service in Florida, are you dealing with the trains that handle the ordinary run of freight, rather than these especially set up trains for handling of perishable fruits and vegetables?

A. The ordinary trains that we operate from all classes of traffic.

By Comm. Patterson:

Q. Is that as distinguished from citrus fruit trains?

A. These local freights are separate from what we call perishable pick up freight trains and solid perishable.

Q. Do I understand perishable citrus fruit for instance is picked up by special trains as distinguished from ordinary way freight?

A. The majority, yes. Local freights do handle a certain amount of it if it is ready when they pass.

Mr. Gwathmey: May I state, Mr. Commissioner, as you probably know, there is practically no intrastate movement in Florida of citrus fruit and vegetables. Almost all of it goes outside of the state and it really is not involved in this proceeding.

By Mr. Gwathmey:

Q. Mr. Rush, from the standpoint of expense, how does [fol. 239] local freight train operation compare with through freight train operation?

A. Our local freight operations are more expensive to us than our through freight due to the fact that the wages paid the crew of a local freight are higher than those paid the crew of a through freight and, in addition, local freight crews remain on duty a much longer time than do the through freight crews. It is seldom that we operate a local freight without paying overtime. As an example, the crew of through freight train 209, between Jacksonville and Sanford, March 15, 1949, consumed five hours and thirty minutes to make the run, whereas the local freight train 533, of the same day, covering the same distance, consumed thirteen hours and ten minutes.

On March 14, through freight train 209, between Jacksonville and Sanford, consumed five hours and two minutes, and local freight train 533, fourteen hours and forty minutes. The wages of a through freight crew for a minimum day are $58.16. The wages for a local freight crew for a minimum day are $60.50. Both of these figures are based upon the train being handled with a p-5 class locomotive. That is, Pacific Class.

By Commissioner Patterson:

Q. You are talking now about the minimum crews as well as the days?

A. Minimum crews and minimum days, yes.

By Mr. Gwathmey:

Q. Does the Coast Line have a substantial amount of [fol. 240] branch line mileage in Florida, and how does Florida compare in this respect with other states in which the Company operates?

A. The Coast Line does have considerable branch line trackage in the State of Florida. We have 961.36 miles of main line trackage in Florida, and 953.35 miles of branch line trackage. In other words, 49.8 per cent of the trackage owned by the Atlantic Coast Line within the State of Florida consists of branch lines. For the system as a whole, the figures are 3285.14 miles of main line and 2240.68 miles for branch line. This represents a percentage of 59.5 main line and 40.5 branch line. Exclusive of the State of Florida, the percentage is 64.3 main line and 35.7 branch line.

Q. Is the traffic, other than perishable fruits and vegetables, which is handled on the branch lines in Florida principally intrastate or interstate traffic?

A. The majority of the traffic handled on the branch lines of the Atlantic Coast Line in Florida, exclusive of perishable traffic, is intrastate traffic. As an example, Train 544, local freight operating on the Palatka Branch, between Palatka and Rochelle, handled 133 intrastate cars and eight interstate cars during the period March 13 to 21, inclusive, 1949, or 94.3 per cent of the cars handled consisted of intrastate traffic.

Local freight train 545, operating on the Palatka Branch [fol. 241] between Palatka and Rochelle, during the same period, handled 61 intrastate cars and only one interstate car. The percentage of intrastate cars handled by this train was 98.4.

I have cited just one example to show that on our branch lines we handle a far greater proportion of intrastate cars than we do interstate.

Q. Is this branch line traffic handled largely in local train service?

A. Yes, it is.

Q. Is the branchline service more expensive to operate than the main line service and, if so, why?

A. The branch line service is more expensive than the main line operation. This is due to the fact that practically all branch line service is local freight service. These crews remain on duty a much longer time, in view of the fact that such trains work practically every station on the branch, and this costs us considerable in overtime.

Q. Mr. Rush, in view of what you have said, what is your opinion as to the expense of conducting railroad transportation in general in the Florida Peninsula, as contrasted with the expense of such transportation on other portions of the Coast Line's system?

A. Our operations within the State of Florida are more expensive than elsewhere on the system due to the fact that such a large per cent of our trackage down here consists of [fol. 242] branch line —. I have shown a few examples which indicate the extent that our branch line trains handle intrastate traffic and why this service is more expensive to us. The same general percentage will hold good on practically any branch line operated in Florida.

Mr. Gwathmey: The Witness is available for cross examination.

Cross-examination.

By Mr. Petteway:

Q. Mr. Rush, the mileage operated in Florida that you testified about a moment ago, how will that be affected by the withdrawal of trains 39 and 40 which were authorized to be withdrawn last week by the Florida Commission?

A. It will not reduce the track mileage; it will reduce the passenger mileage.

Q. The passenger mileage?

A. Yes.

By Comm. Patterson:

Q. This train 39 and 40, they are passenger trains and not freight?

A. Yes, sir.

By Mr. Petteway:

Q. What determines whether intrastate traffic moves in a local or through train?

A. The local freights are run for the purpose of picking up that class of traffic. Any kind of traffic that is ready. Invariably the larger percentage moves in local freights, as [fol. 243] related in the testimony which I gave you.

Q. As a matter of fact, it is managerial practice that you can have complete control over?

A. Not always.

Q. You have substantial control over the situations of that kind, do you not?

A. They usually set up our schedules to suit the movement of traffic to the best advantage of the shippers, as well as to the railroad.

Mr. Petteway: That's all I have.

By Mr. Pettijohn:

Q. Mr. Rush, where did you arrive at your branch line and main line mileage within the State of Florida?

A. From our operating time table.

Q. You classified it, did you?

A. Yes, sir, our management did, yes, sir.

Q. I would like to hand you the sworn report of the Atlantic Coast Line and Florida Railroad Commission as the number of miles, main line track, on the Atlantic Coast Line. It is exclusive of subsidiaries. And ask you what the mileage is?

A. Main line, this shows 693.92.

Q. Branch line. What does the main line show?

A. 1,824.

Q. How many miles,—second line—to main track?

A. 129.61.

[fol. 244] Q. They do not agree with the figures quoted by you, do they?

A. I can't substantiate these figures, sir, if is the first time I have ever seen them. Mine were taken from the operating time table.

Q. I will ask you if that is not a sworn report by the Comptroller of the Atlantic Coast Line Railroad Company?

A. It so reads, sir, but I can't testify to it.

Mr. Gwathmey: May I ask a question? Mr. Pettijohn are those reports to the Florida Commission with respect to branch line and main line mileage made by the carriers pursuant to any formula or rule that is laid down by the Florida Commission?

Mr. Pettijohn: No, it is not.

Mr. Gwathmey: Do you know on what basis the distinction is drawon on this record?

Mr. Pettijohn: I do not. All I know, is it is a sworn statement of the carrier in which they classify branch lines and main line track.

Mr. Gwathmey: There is no fixed rule or formula which you could use to absolutely determine branch line and main line track.

Mr. Pettijohn: I think it is very easily measured.

Comm. Patterson: Someone ought to be able to measure that mileage, at least the aggregate mileage.

[fol. 245] By Mr. Pettijohn:

Q. You referred to train 533 between Jacksonville and Sanford and the number of interstate and intrastate cars. During the shipping season of perishables, is it not a fact that train 533 sets off empty cars for loading?

A. Yes.

Q. And there would be very few empty cars for loading interstate cars during the period you mentioned, March 13 to March 21, set aside for March?

A. Local freight would set off any class of equipment which were needed by the shippers, whether it be for intra or interstate shipments. They would find that those local freights distributed the empties for loading of traffic to a greater extent than the through freights.

Q. Well, that is a matter of management and the dispatcher tells the conductors, trainmasters, what cars he wants to move on what trains?

A. Yes.

Q. And it is entirely up to the railroad whether local cars are on one train or through cars are on the train?

A. Yes.

Q. Now, do I understand that in the interstate cars mentioned by you on trains 533 and so forth, that there are no perishable cars on those trains?

A. That I can't give you because I didn't make an analy-
[fol. 246] sis. I grouped the cars as between intra- and interstate. It is a fact that they would handle perishable if offered, whether inter- or intra-state.

Q. Do you not have certain branch lines in the State of Florida on which your total traffic is practically entirely perishables and fertilizers?

A. Yes, but I can't give you the figures because I didn't make that specific analysis.

Q. How did you classify a car of lumber, we will say, moving from Hosford through Chattahoochee over to Dupont and down? Do you classify that as in interstate or intrastate movement?

A. It is my understanding if it moves out of the State of Florida it comes within the interstate movement.

Q. Well, how did you classify it on the cars that you separated between interstate and intrastate?

A. The trains which I mentioned did move interstate. They were all within the State of Florida.

Q. Didn't they carry any cars that moved from out of the state in there or vice-versa?

A. They carried cars interstate and that was shown in my statement. So many interstate and so many intrastate.

Q. How are most of the refrigerator cars that are set out southbound for northbound loading handled, in an interstate or intrastate train?

A. The refrigerators originate interstate, but after they
[fol. 247] reach Florida, we class them as intrastate in the empty movement in placing or for loading and most of those are spotted by empty,—placed empty, rather.

Q. Then you classify them, if I understand, as an intrastate car moving south of Jacksonville for loading. But you classify them as an interstate car northbound after being loaded?

A. That's right. We don't know where they are going when we place them.

Q. You do know that 99.9 percent of refrigerator cars moving southbound, move in interstate commerce northbound?

A. The majority moves interstate. There is very little intrastate perishable traffic.

Q. Did you have ten refrigerator cars loaded with perishables moving south in the year 1948?

A. I question that we did, although I am not in position to answer.

Q. Whatever extent you have intrastate cars that were southbound refrigerator cars, you have classified intrastate, regardless of the purpose they come into the state for?

A. I will explain that in this way: These cars are moved into the State of Florida after having been conditioned and iced. They are placed and the shipper is permitted to load them to any point which he may desire.

Q. Doesn't your agent at Sanford, for example, notify the [fol. 248] distributor at Jacksonville how many cars he wants for northbound loading?

A. He sends notice for the number of refrigerator cars wanted for loading, but at the time, the destination is not available and the shipper seldom knows.

Q. So the fact of the matter is unless it is a loaded car, all the movement you have in the State of Florida, southbound, is classified by you as intrastate car?

A. Yes.

Mr. Pettijohn: That's all. Thank you.

By Mr. Hillyer:

Q. Mr. Rush, in your experience, I understood your entire career was devoted to transportation? That is, to the physical operation, is that correct?

A. Yes.

Q. Have you had any experience in accounting or cost accounting?

A. No, sir.

Q. When you spoke of the expense of the train of local as compared with through trains and so forth, you had in mind, I believe, the matter of the wages to the crew almost entirely, is that correct?

A. Entirely.

Q. Did you take into consideration that one local train might have one hundred cars and a through train might have fifty?

A. An analysis was made of the total cars handled in each [fol. 249] train. There was no particular car limit singled out.

Q. In other words, your remarks then related to the train unit exclusively and did not take into consideration the number of cars per train?

A. We did not make a segregation of the heavy trains or the light trains. We took them for a specified period, both in through and in local freights and separated the intra- and interstate cars.

Q. And you didn't take into consideration the difference, what the difference might be in average loading per car?

A. The tons per car was not taken into consideration.

Q. And you didn't take into consideration the length of haul?

A. The mileage that these cars made? No, sir.

Q. You didn't take into consideration the type of switching service required for one class of freight as compared with another?

A. Only in generalities, outlining that the expense of local service, due to the excessive switching required, is more expensive to us.

Q. In states outside of Florida, isn't it true that the Coast Line has local trains and has short trains for instance between short-haul points, as well as through and overhead traffic?

A. I can speak for portions of Georgia and Alabama, of which I am in charge, yes.

Q. Aren't the wages of the local train crews the same in [fol. 250] Georgia and Alabama as they are in Florida?

A. Yes.

Q. Isn't that true of branch line operations?

A. Certain branch lines have a different rate, but that is very little different and not enough to affect the over-all picture. They have a differentiation rate.

Q. Don't you have some particularly long trains in Florida such as phosphate rock going to Tampa. For local traffic?

A. The length of trains is not excessive because of the tonnage in the phosphate cars when they are loaded. That tonnage is so heavy that you do not get a long train.

Q. In your study, how did you classify your phosphate trains going to Tampa?

A. That is intrastate traffic when destined to a point in Florida.

Q. Even though it is to be exported?

A. We bill to Port Tampa. When it is billed to Port Tampa, it is an intrastate movement. The exporting does not take place until the shipper directs the vessel in which it shall go.

Q. Do you have any movements of forest products to any ports in Florida?

A. Very little, sir, in the last year.

Q. And you would class those all as local trains, would you?

A. It wouldn't be intrastate if it is so billed.

[fol. 251] Q. Even though it is destined to interstate or foreign ports by water?

A. I could only answer that, that—but I'd have to be governed by the billing. If it is billed to Jacksonville and originated in the State of Florida, it would be classified as an intrastate. The disposition of it, what the company makes of it after the arrival at the port is not known to me.

Q. You referred to movement into Palatka, a local movement. Was that a particular class of traffic?

A. A large percentage of traffic on that line between Rochelle and Palatka or Palatka and Rochelle, rather, is sand and road-building material.

Q. Those materials usually move in heavy trains? A great many cars?

A. No, not an excessive number of cars.

Q. Do you have any trains on interstate points from that region? That same region?

A. No. No movement of any consequence, Mr. Hillyer.

Q. In drawing your conclusions on this question of local and through trains, did you arrive at the classification of trains from the wheel reports?

A. Wheel reports, yes.

Q. Would they necessarily show which was a strictly branch line portion of that movement and which was the local train, or not?

[fol. 252] A. The wheel report shows the point of origin and the destination and it also would show you the mileage which that particular car made on that particular train. For example, in the car in the case of the Palatka branch, namely Palatka to Rochelle, we took the wheel report, sir, and counted the cars, showing the point of origin and the

destination and in that way obtained the information which I have testified to.

Mr. Hillyer: That's all I have.

By Mr. Wells:

Q. Mr. Rush, in the studies that you made, about which you have testified, did you classify all empties as intrastate trains?

A. If they were moved by these intrastate trains, yes. Because the destination,—the car was not billed from the point of origin to any one specific destination.

Q. I don't think that quite answers the question. In the studies you have referred to in your testimony here, did you treat each of the empty cars in this particular train as an intrastate movement?

A. Yes.

Q. You stated that there was practically no movement within Florida intrastate of perishables. That is, fresh citrus fruits and fresh vegetables. Were you referring only to the railroad?

A. Yes, only to railroad transportation.

[fol. 253] Q. Whatever movement intrastate there is in Florida of fresh citrus fruit and fresh vegetables is by motor truck, isn't it?

A. That I can't answer, but I think you are right, sir.

Mr. Wells: That's all.

By Mr. Winn:

Q. Concerning these branch lines, is it not true that all kinds of traffic originates on those branch lines in Florida, all kinds of commodities?

A. Yes.

Q. And is it not true that a great many of those commodities originating on branch lines move interstate?

A. Yes, and in line with the testimony I gave, I made a check of these wheel reports to separate the intrastate from the interstate traffic on these specific sections of lines.

Q. Is it not true that those branch lines are necessary feeders for your interstate trains?

A. Yes.

Q. In other words, they are important traffic originating parts of your railroad plant?

A. Yes,—what was that again?

Q. Is it not true that these branch lines are important interstate traffic originating parts of your railroad?

A. Interstate traffic originates on our branch lines as well as our main lines. Some originate more interstate traffic of importance than other lines.

[fol. 254] Q. It would not be fair, would it, to say that intrastate commerce must bear the cost load of maintaining necessary branch lines?

A. I can only say that the expense of operating our local freight, handling intrastate, costs us more than the handling of the through interstate traffic.

Q. Now, in that connection, you spoke of the greater switching on intrastate traffic. That intrastate traffic has both origin switching and delivery switching, does it not, within the state?

A. Yes.

Q. On your interstate movements you have only originating switching or terminating switching, is that not right?

A. That's right.

Q. Is that not a large part of the explanation of why more switching is on one kind than on the other?

A. Intrastate traffic is, as you say, the originating switching and final terminal switching.

Q. So you have a complete service on the intrastate traffic?

A. That's right.

Q. Performed within the State of Florida?

A. Yes.

Q. Now, on your interstate traffic, only part of the service is performed within the State of Florida?

A. Correct.

[fol. 255] Q. What other additional switching did you have in mind in connection with intrastate, other than what we have been discussing?

A. The picking up of the traffic interstate, as well as intrastate, necessitates your freight train switching that particular car out, respotting the industry. In intrastate on arrival at the destination, it must be placed at a specific

point for unloading. There are certain locations that require more work to get the car in the exact spot that the industry wants it in than others. In the case of interstate traffic you pick up the car and then it is moved throughout the state in the service which is best suited.

Q. And the spotting service is performed at the other destination, out of the state?

A. Yes.

Q. From a rate standpoint, Mr. Rush, you are compensated for both originating services and delivering services whether the service is intrastate or interstate?

A. I am sorry, sir, I can't testify on the rates.

Mr. Winn: Very well, that's all.

By Mr. Ribe:

Q. Mr. Rush, you testified as to the cost of your intrastate service, as compared with interstate service, but the only factor of cost you treated was the wages of your crews. You did not in arriving at the conclusion take into account the cost of maintenance of branch line traffic as compared [fol. 256] with branch service. You completely omitted all those costs?

A. I can only testify as to the wages. I did not testify as to coal, fuel, maintenance, both of locomotives and equipment. I made no study.

Q. Nor of the track?

A. Nor of the track.

Q. You say maintenance. That also includes depreciation, does it not?

A. Yes, sir.

Mr. Ribe: That's all.

Comm. Patterson: Any further cross examination?

By Comm. Patterson:

Q. Mr. Rush, you made a statement about your branch line crews as distinguished from main line crews. Do you have any such train service known as mixed train service down here?

A. Yes, we do.

Q. Would that mixed train service be on branch line or main line?

A. All in the State of Florida is on branch line.

Q. How do you pay those crews? Do they get the same pay as what the freight crews? Or more or less?

A. The same as the local freights on the lines in Florida.

Q. In the lines in Florida?

A. Yes, sir.

[fol. 257] Q. You testified with respect to the separation of your testimony as between branch lines and main lines and did I understand you to say that you hadn't separated that service or that you had separated it?

A. We separated this service in my testimony, if I understand your question correctly. We took, sir, certain branch lines. As an example, between Palatka and Rochelle. We gave those figures. Then we took a main line.

Q. I am not talking about the lines. I am talking about the trains on the line. Did you separate your local trains from your through freight trains in every sense in your testimony?

A. Yes.

Q. Now there was some testimony with respect to the terminal service in Florida. Did I understand you to testify that in Florida on intrastate traffic you'd have two terminal services in every instance?

A. Yes.

Q. What would happen on a branch line that intersected the main line between terminals in Florida, if you understand what I mean. A branch line comes into the main line. Did you testify the originating point would be one terminal and the destination would be another terminal?

A. Yes.

Q. What would be the situation in respect to the intersecting point where the branch line intersects the main line. [fol. 258] Would that be a third terminal?

A. Yes, I dealt with point of origin and destination. I did not deal with junction line where a branch line set it off to be picked up by another train.

Q. You didn't regard that as any moment?

A. I did not take that into consideration, although it does produce additional expense.

Q. You testified, I think, with respect to wheel reports. How are those wheel reports made out? Doesn't each conductor make his own separate wheel report?

A. He does.

Q. And the wheel report in each instance then would correspond with the run of the conductor, is that correct?

A. Yes, sir, you are correct.

Comm. Patterson: Any further questions?

By Mr. Pettijohn:

Q. You- conductor's wheel report shows final destination of the car, does it?

A. No, sir. I mean yes.

Q. And you made classification on the final destination of the car as shown on the conductor's wheel report?

A. Yes, both intrastate and interstate.

Q. You didn't give any consideration as to lading, whether it was moving on intrastate or interstate rates?

A. I cannot testify on rates.

Mr. Pettijohn: Thank you.

[fol. 259] By Comm. Patterson:

Q. I would like to get that straight. How the conductor's wheel report can show final destination of cars that might be diverted for some reason or for reassignment?

A. Diversion is usually made after the car is in route and there is very little diversion in an intrastate traffic. Practically none, sir.

Q. On intrastate traffic?

A. Yes, sir.

Q. But how could the conductor's wheel report show the final destination when the car was shipped on consignment, reconsignment or might be diverted?

A. The only information he can show would be the billing destination as furnished him when he moves the car. The intrastate diversions are negligible. It is the interstate diversions. The preponderance are interstate diversions. Therefore, the conductor would not know where the car was going because it is invariably diverted, sir, at a centralized point.

Q. You testified that all of the cars that you classified, that your classification was made entirely from information on the waybills, did you?

A. Yes.

Q. If a waybill should,—if a car should be billed from some point in Florida to another point in Florida, and the [fol. 260] waybill should state the final destination that it is for movement beyond some point in Florida, how was that classified in your report?

A. If it was wholly within the state it was intrastate. If the destination was beyond the state, we showed the final destination as interstate.

Q. Well, was that exactly as you previously testified? Now bear in mind what I am trying to get in my head as to what you did with this class of traffic that was billed from Palatka, for example, to Jacksonville, and were shown as having final destination to some point outside the state, which the way bills frequently do, don't they?

A. The final destination is invariably shown. In fact, it is always shown on the way bill and if that waybill showed Jacksonville, it would be classed probably, as an example, from Palatka to Jacksonville, it would be classed as intrastate; if it was billed from Jacksonville moving through Jacksonville, we'll say to Baltimore, it would be classed as interstate.

Q. Well, now, I want to be sure that we understand each other alike. I am not talking about an interstate waybill. I am talking about a waybill, local to the Atlantic Coast Line from Palatka to Jacksonville, but the waybill shows the final destination, that is, the waybill shows it is to be moved beyond Jacksonville. It perhaps will be rebilled in Jacksonville, but the destination is shown on the waybill.

[fol. 261] A. When the destination is shown as Jacksonville, sir, we classify it as intrastate.

Q. Now then, this—what do you call this rock?

A. Phosphate?

Q. Phosphate rock in Florida, when that phosphate rock is billed from some point in Florida to, we'll say, Port Tampa and the final destination is shown on the waybill, how did you classify that?

A. The traffic is billed, sir, local to Port Tampa to the

agent for the steamship company. That goes as an intrastate shipment.

Q. You know it is to be moved interstate, though?

A. Yes, we know that it is to go out of the state.

Q. You still classed it as intrastate?

A. That's right. I'd have to take the waybill from which I make my report.

By Mr. Harrison:

Q. How do you classify traffic moving between points on your line on Peninsula Florida and points on the L & N, and Chattahoochee to Pensacola. How do you classify that?

A. Anything that moves out of the State of Florida is classified as interstate?

Q. Anything that moves out of Florida back into Florida, you count that as interstate?

A. When it is moving out of Florida, that is counted as [fol. 262] interstate. That is my information.

Q. That applies there to West Florida?

A. Yes.

By Mr. Pettijohn:

Q. Is there any diversion point on intrastate traffic in Florida?

A. The tariff provides that a shipper may divert at any point. Our principal diversion points are on interstate traffic because it is negligible and doesn't warrant our setting up a regular diversion but he has the right at any time to divert his traffic, but that is negligible, sir.

By Mr. Gwathmey:

Q. On your interstate movement, where you do have diversions, do not the diversions ordinarily take place at the point outside of the state of Florida?

A. They do.

By Mr. Hillyer:

Q. Isn't it a fact that a great many shipments of perishables are billed first to one of your points in Florida such as High Springs on your line?

Mr. Gwathmey: Did you say perishables?

Mr. Hillyer: Yes.

Mr. Gwathmey: We have already stated perishables are not involved here. Do you want to get that answered and get into that question?

Mr. Hillyer: Let me ask a couple of questions.

By Mr. Hillyer:

Q. Isn't it a fact that there are shipments going to points in Florida which are billed as, say lumber, for example, may be billed to Florida East Coast to Batton yards and afterwards diverted or reassigned during transit. [fol. 263]

A. There may be isolated cases, Mr. Hillyer, but it is negligible. Very little.

Q. Leaving out lumber, would you say there is very little diversion on Batton yard going to interstate points eventually?

A. We seldom have diversion on intrastate.

Q. Competitive with the Florida East Coast? Are you?

A. Yes, sir.

Q. Don't you know their practices in connection with the billing?

A. No, sir, I can't answer that.

By Mr. Petteway:

Q. How do road aggregates in Florida move for the most part?

A. Intrastate.

Q. Local freight trains?

A. Yes, sir.

Mr. Petteway: Thank you.

Comm. Patterson: You are excused.

(Witness excused.)

J. N. BROETZMAN, was sworn and testified as follows:

Direct examination.

By Mr. Gwathmey:

Q. State your name, residence and railroad position?

[fol. 264] A. J. N. Broetzman, 715 East 49th, Savannah, Georgia, and headquarters in Savannah, Georgia.

Q. Did you state your position with the Seaboard?

A. Assistant General Manager.

Q. What is the nature of your duties?

A. I have general supervision over transportation facilities on the system.

Q. Does that embrace the entire Seaboard system?

A. Yes.

Q. Please outline briefly your experience in railroad transportation matters?

A. I have been in the transportation department since 1920 as telegraph operator, agent operator, train dispatcher, chief train dispatcher, and assistant train master, train master, assistant superintendent, terminal superintendent, division superintendent and I was appointed to the position of assistant general manager at Savannah, Georgia, on July 1, 1948.

Q. What is the total mileage of the Seaboard and how much is located in the State of Florida?

A. We have a total mileage of 14,153.26 miles on the system and in Florida we have 1506.43 miles.

Q. In what states, other than Florida, does the Seaboard operate?

A. We operate in Virginia, in North and South Carolina, [fol. 265] Georgia, Alabama and Florida.

Q. Florida?

A. Yes, sir.

Q. From the standpoint of the amount of service and the expense thereof, how does the transportation of intrastate freight traffic within the State of Florida compare, generally speaking, with the transportation of interstate traffic moving between Florida and other states and elsewhere on the Seaboard system?

A. Conditions under which intrastate traffic is handled in the State of Florida as compared with the handling of

interstate traffic moving between Florida and other states and elsewhere on the Seaboard are much less favorable from the standpoint of cost of operation.

Q. On the Seaboard do the same trains ordinarily handle both interstate and intrastate traffic, the two kinds of traffic to that extent receiving the same service?

A. Yes, intrastate traffic is handled in both through and local train service. Under such conditions both classes of traffic receive the same service. Irrespective of whether or not intrastate traffic is handled in through or local freight trains, in no case would the cost of handling be any less than the handling of interstate traffic.

Q. Is the intrastate traffic, as contrasted with the interstate traffic, ordinarily handled to a greater extent in local [fol. 266] rather than in through freight train service?

A. Yes.

Q. Can you give some illustrations of the extent to which the freight train service operated in Florida consists of local rather than through train operations?

A. A large percent of the freight train miles operated in the State of Florida, particularly the South Florida Division, is local freight train miles. For the calendar year 1948, local freight train miles to total freight train miles operated on the North Florida Division was 24.2 percent and on the South Florida Division 61.9 percent as compared with 21.5 percent for the remainder of the railroad. Percent of local freight train hours to total freight train hours on the two Florida Divisions for the year 1948 was 52.5 percent, as compared with 35.8 percent for the remainder of the system. On the South Florida Division, where the percent of local freight trains operated is substantially greater than is the case of through freight trains, a check of traffic handled for the period March 21st to 31st, inclusive, 1949, shows 600 interstate cars and 97 intrastate cars handled in through freight service, while 1,243 interstate cars and 2,332 intrastate cars were handled in local freight train service—the intrastate exceeding the interstate cars 59.7 percent. Percent of local freight train switching locomotive miles to total freight train switching locomotive miles for the same [fol. 267] year North Florida Division was 69.5 per cent—for the South Florida Division 89.7 per cent as compared

with 49.9 percent for the remainder of the railroad. This has a very definite adverse effect on unit cost of operation.

Q. From the standpoint of expense, how does local freight train operation compare with through freight train operation?

A. The cost of local freight train operation is much higher than is the cost of through freight train operation.

Q. Why is local train service more expensive than the through service?

A. The rates of pay for local freight crews is higher than is the case of through freight crews and further, practically all of the local freight crews make considerable overtime, which is paid for at time and one-half. As an example, for the month of March on the South Florida Division, a total of 1,075 local freight trains were operated, crews of which were paid a total of 3,109 hours, 25 minutes overtime, or an average of 2 hours, 54 minutes per train operated. On the North Florida Division, during the period March 13th to 21st, inclusive, 1949, excluding two Sundays on which days local service is not operated, train No. 51 operated Baldwin to Tallahassee, a distance of 147 miles, 7 trips, handled 190 intrastate and no interstate cars; average daily time on duty 15 hours, 43 minutes, average overtime four hours, one [fol. 268] minute. Local freight train No. 52, operated seven trips, Tallahassee to Baldwin for the same period, handled 182 intrastate and 56 interstate cars, average time on duty twelve hours, 36 minutes, average overtime one hour, 44 minutes. This is a total of 14 trains operated, handled a total of 418 cars of which 372 or 89.0 percent were intrastate, the remaining 46 cars or 11.0 percent were interstate. A two-day check, March 13th and 14th, 1949, of through freight train service operated between Baldwin and Tallahassee in both directions, shows total of 13 trains operated and traffic handled by those trains consisted of 90.0 percent interstate—the crews averaged on duty total of five hours, 26 minutes, as compared with the 14 local freight trains operated averaging 14 hours, nine minutes on duty. For the year 1948, the cost of crew wages and fuel per 1,000 gross ton miles operated on the two Florida Divisions was 88 cents, as compared with 73 and nine-tenths cents for the remainder of the system. The cost on the Carolina Division,

where a large percent of the traffic is interstate, was 53 and three-tenths cents per 1,000 gross ton miles. This shows conclusively that the cost for handling intrastate traffic is much greater than is the case of interstate traffic.

Q. Does the Seaboard have a substantial amount of branch line mileage in Florida, and how does Florida compare in this respect with other portions of the Seaboard system?

[fol. 269] A. The total miles of road operated by the Seaboard in the State of Florida is 1,562.43, of which 926.18, or 59.3 percent, consists of branch lines. Total miles operated in states other than Florida 2,590.83, of which 877.1 or 33.9 percent are branch lines.

Q. Mr. Broetzman, from an operating standpoint how do you distinguish between main lines and branch lines?

A. Our service is classified on our operating reports as through or local service, through and local freight mileage and that is from where we got these figures,—from what we call 411 and seven daily operating reports.

Q. Does the treatment of the line as branch or main line from an operating standpoint necessarily correspond with its treatment for other purposes and in connection with reports, for example, made to the Florida Railroad Commission?

A. It may differ. I am not qualified to say how the Commission classifies the branch line and main line of service, or trackage. It may be on an evaluation basis or some other basis. I don't know.

Q. Is the traffic, other than perishable fruits and vegetables, which is handled on these branch lines principally intrastate or interstate traffic?

A. The traffic handled on the branch lines is largely intrastate.

Q. Is this branch line traffic handled largely in local [fol. 270] freight train service?

A. Yes, a large percent of traffic originating on branch lines is handled in local freight train service.

Q. Is branch line service more expensive to operate than main line service?

A. Yes, sir.

Q. What are some of the reasons why branch line service is the more expensive of the two?

A. As has been previously stated, traffic originating on branch lines is handled principally by local freight trains, the cost of local freight train operation is substantially higher than is the case of through freight train operation. The minimum wages paid for a local freight crew per day are $66.15, while the wages for a local freight crew for an average day are $104.19, or 57.5 percent more than is paid for the operation of a through freight train.

Q. In view of what you have said above, what is your opinion as to the expense of conducting railroad transportation in general in the Florida peninsula, as contrasted with the expense of such transportation on other portions of the Seaboard's system.

A. The cost of freight train operation in the State of Florida is much higher than elsewhere on the Seaboard system, due in large part to the fact a large percent of the traffic is intrastate and is handled principally in local freight [fol. 271] train service, and as has been previously pointed out, the cost of local freight train service is considerably more than the cost of through freight service.

Mr. Gwathmey: The witness is available for cross examination, Mr. Commissioner, I am sure it is understood that I haven't the slightest desire to cut off cross examination. I want everybody to have that chance, but there are a large number of people in this hearing and a great number of them are cross examining and I respectfully suggest we make better progress and the attorneys arrange among themselves as to the order they will cross examine and that each attorney or representative complete his cross examination while he is about it and not think up some more questions after he has sat down and keep on with a running fire of cross examination.

Comm. Patterson: I think it would be a good thing to do if the attorneys for the opposition would try to get together and consolidate as much as they can. It may save us from working some long nights here before we get through.

Cross-examination.

By Mr. Petteway:

Q. Mr. Broetzman, in testifying that transportation conditions generally are less favorable in Florida than else-

where, did you have in mind any conditions other than ones you specifically mentioned in your testimony?

A. Operating conditions we have in mind, of course. [fol. 272] Some have been stated, but are intrastate movements, some are confined to local and switching service. That is quite expensive.

Q. You heard Mr. Rush testify? You were in the room when he testified, were you not?

A. Yes, sir.

Q. Does the management of Seaboard also have control over where the traffic will move in local trains or in through trains?

A. The control of the movement of traffic as between local and through freight service is largely governed by the necessities, the service necessities that we have to meet with the various shippers and consignees; in some cases the physical condition, where perhaps a larger type of locomotive can't go and you have to use smaller types and through freight service assignments are usually heavier power. Also, through freight service, as you know, operates principally on schedules that will not permit stopping en route and switching local stations.

Q. You do have control over that situation, then, do you not?

A. Oh, yes, we regulate it according to the needs.

Q. Now, do you handle or do you classify empties moving in Florida just as the Coast Line does, as intrastate?

A. I didn't exactly understand Mr. Rush, but the way we do, our cars are generally transferred from the north. The [fol. 273] Majority of our empty cars are refrigerators and they are transferred in from the North and it is billed either on Jacksonville or Baldwin and those are the strategic distribution points, being our gateway to Florida and all movements then from Jacksonville to Baldwin to distribute these empties would be considered intrastate.

Q. Do you have a phosphate movement to Port Tampa similar to the one of the Coast Line?

A. We have some cars billed to Port Tampa in connection with the Coast Line. They have to move into Port Tampa by Coast Line.

Q. Do you classify those as intrastate?

A. Yes, we do.

Q. Do you know whether interstate or intrastate rates are applied to that movement?

A. I do not.

Q. You do not know about the rates?

A. No, sir.

Q. Now, do you have any road aggregate movement over your road in Florida?

A. Yes, sir.

Q. How does that move mostly?

A. Intrastate, local switcher freight.

Mr. Petteway: That's all.

By Mr. Pettijohn:

Q. Mr. Broetzman, what is the heaviest loading com-
[fol. 274] modity in tons that originates in Florida?

A. On the Seaboard, phosphate rock.

Q. And what is the heaviest movement that terminates on the Seaboard in Florida?

A. I would say,—I can't say. Possibly, my guess would be phosphate rock.

Q. How did you classify that, as an intrastate movement?

A. All cars destined to points in Florida and originating in Florida would be intrastate, yes, sir.

Q. Didn't the phosphate rock shipped to Tampa and Port Tampa for advancement by water become interstate?

A. It depends on the billing. If it is billed to Tampa for delivery to shipping agents, I don't see how we can consider that interstate shipment.

Q. Don't you know all the shipments moving to Tampa for transhipment moved under interstate?

A. No, sir, I don't.

Q. You don't know of any moving intrastate?

A. I am sorry to have to admit I simply don't know anything about the rates.

Q. Did you state where your separation between North Florida and South Florida was? You mentioned a division?

A. That's right. The North Florida Division consists of the mileage from Chattahoochee and the state line on the Bainbridge subdivision to Jacksonville and including the St.
[fol. 275] Marks branch, the Monticello branch and the inclusion of the line from Baldwin and Jacksonville south to

Homestead and the Orlando branch, the Wanee, and the Istokpoga spur.

Q. World it be a fair statement to state everything north of Wildwood and southeast of Wildwood to below Miami?

A. That is the North Florida Division, yes, sir. Now, with one exception, please. The line that extends north of the Wildwood, parallel to Waldo, the second line which is known as the Brooksville line is not any part of the North Florida Division.

Q. I understand. Now, did I understand you to say there were 926 miles of main line track in Florida?

A. That's what the figures I have show, yes, sir.

Q. Who classified that mileage, do you know?

A. We arrived at that from our operating time tables.

Q. You also made some reference, I understood, as to the Commission. You didn't know how the Commission made the separation between branch and main lines. What Commission were you referring to?

A. Perhaps I didn't use the proper phraseology, but I understand that is a report required by the Commission and evidently our line or the representatives who are required to render that report of that have instructions from the Commission or somebody as to what should be termed a main line and what should be termed a branch line.

[fol. 276] Q. You mean to say there is any other instructions other than the instructions at the top of the schedule?

Mr. Gwathmey: If the Commissioner please, may I interrupt? I don't think this witness has anything whatever to do with the preparation of that report.

The Witness: No, I don't.

By Comm. Patterson:

Q. What significance does that mileage have, anyway? How much difference is there between the reported mileage and the mileage that this witness has tabulated from his time table?

Mr. Pettijohn: The total mileage in Florida is 1,564.37, of which the main line is 1,500.1.

Comm. Patterson: The aggregate mileage is off two miles.

Mr. Pettijohn: I am not questioning the aggregate. 926

being main line and this witness testified the big expense of the branch line and under his testimony you'd come to the conclusion that 648—and I think it has an important bearing on the case.

Mr. Gwathmey: May I ask a question, Mr. Pettijohn?

Mr. Pettijohn: I asked him about the other.

Mr. Gwathmey: May I ask you a question?

By Mr. Pettijohn:

Q. You say you made your statement up from the workmen's time table?

A. In our operating time table and what we operate our local service.

[fol. 277] Q. And what do you construe branch line, not what your superior officer considers branch line?

A. What do we consider branch line service?

Q. Who do you mean by "we"?

A. The operating department.

Q. Do you know where the accounting department gets the mileage?

A. As I have stated once before, I don't know how they arrived at that mileage.

Q. Are you challenging the correctness of the sworn report to the Commission?

A. No, indeed. They may have a different basis.

Q. You said branch line, other than perishable, was mostly intrastate. What percentage of your total branch line is intrastate, including the perishable?

The Witness: Would you read that back?

(Last question read by the reporter.)

A. I don't have those figures but intrastate perishable is very small.

Q. I am asking you what percentage of the total branch line traffic including perishables is intrastate?

A. I don't believe I have that figure.

Q. What is the meaning then that the intrastate, with the exception of perishables, is the greatest portion of branch line traffic?

[fol. 278] A. I might state it this way: That the greater portion of our branch line traffic consists of sand, gravel,

phosphate and pulpwood, and commodities of that kind. Some clay.

Q. If you have a branch line traffic of which 90 percent for example is interstate perishables, what significance is it to say that of the ten remaining percent it is mostly intrastate?

Mr. Gwathmey: That question is argumentative. It seems to me——

Mr. Pettijohn: I am asking the question why he——

Comm. Patterson: You can draw your own conclusion.

By the Witness:

A. Our branch line produced more non-perishable intrastate than it does perishable traffic. I can't tell you how much that is divided into as between perishable or dead freight.

Q. You spoke about 90 percent of your trains, 13 and 14 between Baldwin and Palatka as being intrastate. What commodities do they handle between Baldwin and Tallahassee intrastate in any volume?

A. Principally pulp wood.

Q. Did you give any figures showing what the movement intrastate and interstate was for your through trains from Tallahassee?

A. Yes, I think I did. A two day check, as I have already testified, March 13 and 14, 1949, between Baldwin and Talla- [fol. 279] hassee in both directions shows 13 trains were operated and that traffic consisted of 90 per cent interstate.

Q. 90 percent interstate?

A. Yes, sir.

Q. Does most of that traffic that is interstate traffic that comes to you there at Chattahoochee and Bainbridge?

A. Yes, sir.

Q. You didn't in any case did you, determine whether or not a car was carrying interstate or intrastate traffic by reference to the waybill?

Q. Only by the destination shown on the waybill. We checked no rates whatsoever. In fact, the conductor, I am sure, and I don't know when I look at the rate whether it is interstate or intrastate.

Q. You just took the conductor's wheel report showing

origin and destination and points between which he carried with the description of the commodity?

A. That's right.

Mr. Pettijohn: That's all.

By Mr. Hillyer:

Q. Mr. Broetzman, as I understand your testimony, you are talking about transportation entirely from the standpoint of a transportation man?

A. Yes, sir.

Q. Have you had any experience at all in accounting?

A. No, sir.

[fol. 280] Q. When you use the term cost and expense, did you have in mind particularly the difference in the wages of a crew of local train and through train?

A. In some of these figures, the wages were considered exclusively and in some of the figures we did include fuel.

Q. Wouldn't it be true in any stat in which you operate that cost of the local train woul be higher than the through train? There is nothing peculiar about Florida in this respect, is there?

A. The rates are applicable over the system, that is, local freight rates, but the operating conditions and the volume in Florida, that is, the local freight train mileage is so much greater and branch line miles is greater and the local is greater and hence the center of that particular operation centers around Florida.

Q. The wages of the local train crew, are they any different in Florida from elsewhere?

A. No, sir.

Q. And the wages of the through train is the same in other states as in Florida?

A. Yes, sir.

Q. Are there any topographical conditions or geographical conditions such as hills that make Florida operation more difficult than other states?

A. The only geographical condition that makes Florida [fol. 281] a more expensive operation than the general run of local service is the short mileage runs between the terminals or point of origin and destination. For instance, we have any number of trains operating within the phosphate

territory, making very short hauls and they have long hours and the same is true in the territory where we have heavy wood movements.

Q. Now, with respect to that run, you selected between Jacksonville and Tallahassee. Isn't it a fact that most of your high density trains operate north and south through the Baldwin or Yulee gateways?

A. Yes, sir, the heaviest trains that is through freight operate between Baldwin and Wildwood and the tonnage that is handled through Jacksonville is not nearly so great as it is through the Baldwin terminal.

Q. Isn't the line from Jacksonville to Tallahassee very low density line of the Seaboard?

A. We handle considerable tonnage there. I cannot, of course, compare that line with density to Wildwood, Baldwin line.

Q. In Virginia and North Carolina, isn't it a fact that you have topography of the country which usually requires you to figure grades and curves whereas in Florida you have almost level flat country all the way?

A. The elevation, the variation in elevation is much greater in the territory north of Jacksonville than it is in Florida. However, grade conditions between Jacksonville and Bainbridge and Chattahoochee are almost comparable [fol. 282] to those in North Carolina. We have some one point two percent grades on the west of Tallahassee line.

Q. Isn't it a fact that your average maximum grade within the South Florida division is less than any other division of the Seaboard?

A. That's true.

Mr. Hillyer: That's all I have, sir.

Comm. Patterson: Any further cross-examination?

By Mr. Ribe:

Q. Again you testified the same as the previous witness that the cost of local freight trains vary considerably from that of through freight trains, but the only facts that you cited was rates. Did you not take into consideration——

Comm. Patterson: He answered the same question. Would your answer be the same as the Coast line if he asked you the same questions?

A. I'd have to make one change in some of our figures, though. Gross ton miles, we did take fuel into consideration because there is quite a difference in fuel consumption as between local freight and through freight in per thousand gross ton mileage.

Q. I may have misunderstood. I thought those fuel figures had to do with traffic within Florida as traffic moving within Florida, Alabama and Carolina. Within Florida, did you give your fuel figures for local service and through [fol. 283] service?

A. The fuel,—wages and fuel in 1948 per thousand gross ton miles operated on two Florida divisions was eighty-eight percents as compared with 73.9 percent on the rest of the system.

Q. That has nothing to do with the breakdown between local freight trains and through freight trains within Florida?

A. No, that isn't broken down as to through or local.

Q. In other words, there were many elements of cost that you did not consider in arriving at conclusions for that local freight train service is more expensive than through freight train?

Mr. Gwathmey: The witness very distinctly said it was due largely to matters he mentioned.

Comm. Patterson: Any further cross-examination?

By Comm. Patterson:

Q. I think, Mr. Broetzman, that you testified that the average day with respect to local train service was greater than with respect to through train service. Did you mean the average day or the average trip. Isn't a day a day wherever you find it? When you speak of minimum days?

A. Yes, sir.

Q. I am not speaking of any kind of a day. Days are not minimum days. A day is a day and when you get beyond a day, you pay overtime, a time and a half time, but a day is a day wherever you find it?

[fol. 284] A: If you will permit me, I will clarify that.

Q. Yes, what I want to clear up——

A. For instance, a through freight day consists of eight hours or one hundred miles or less. The same thing in

local freight day. But there is a differentiation in that minimum local freight rate for a minimum day. It is greater than the through freight day. Now, the figures that I prepared here was the average work day.

Q. Let's stick to the minimum for a minute. That is eight hours whether it is through freight or local freight?

A. Yes, sir.

Q. When you get beyond the minimum day, you go into overtime, don't you?

A. That's right.

Q. And overtime is time and a half whether it is through freight or local freight?

A. That's right.

Q. Are you talking about the average day or average time consumed on a trip?

A. We took the service trips and averaged it. Say we had, for example, ten through freight service trips, ten local freight service trips. The local freights, as I stated in the testimony, average two hours and 54 minutes overtime on a trip.

Q. On a trip?

[fol. 285] A. Yes. That overtime was included in the service day in this 104 dollars and some cents plus differentiation as between through freight rate and local freight rate.

Q. Then when you said there was an average of four hours overtime for, I think you said a day, perhaps you meant a trip. With respect to local trains, Do you mean that you paid them an average of six hours overtime a day?

A. This particular run that averaged four hours and one minute overtime per day for the seven trips was local between Tallahassee and Baldwin,

Q. How much overtime did you pay them at the rate of six hours overtime or four hours at the regular rate?

A. Full—well, if you will permit me now, there's 147 miles involved in this run. The basic straight time is payable up to the divisor of twelve and a half into 147. So he had to work his six hours and some minutes before he actually went to time and a half. Then he was paid four hours.

Q. What I am trying to get at: This four hours, did you pay him at overtime rate or straight rate?

A. Overtime. Time and a half.
Q. That is equivalent to six hours in straight rate?
A. That's right.

By Mr. Harrison:

Q. Did I understand you to testify as to percentage of interstate and intrastate traffic on that local between Tallahassee and Baldwin?
[fol. 286] A. Yes, sir, that was shown.

Mr. Gwathmey: Mr. Harrison, do you want him to repeat it?
Mr. Harrison: It is in the record?
Mr. Gwathmey: Yes.
Mr. Harrison: That's all.
Comm. Patterson: Any further cross-examination? You are excused.

(Witness excused.)

Mr. Gwathmey: Mr. Commissioner, Mr. Wells told me that he has several witnesses for shipments who are anxious to leave and asked if I would be willing to stand aside so he can put them on. I said I would be very glad to accommodate him, providing it is agreeable to the Commission and the Examiner.
Comm. Patterson: All right.

C. E. Reger was sworn and testified as follows:

Direct examination.

By Mr. Wells:

Q. Please state your name and residence for the record?
A. C. E. Reger, 7620 South West 55 Avenue, Miami, Florida.
Q. What is your business?
A. We are manufacturers of fertilizer, chiefly.
Q. At what points?
A. We have mixing plants at Belle Glade, Florida, and Miami.

[fol. 287] Q. In what area is your sales territory, that is to what destination do you ship?

A. From a line drawn east and west from Okeechobee City to Fort Pierce, south on the East Coast to Florida City. That's it.

Q. All of your shipments, then, are intrastate?

A. Yes, sir.

Q. That is from your mixing plants

A. Yes, sir.

Q. From what sources do you obtain your materials that go into your mixed fertilizer?

A. About half of the materials comprising mixed fertilizers are provided and shipped from within the State of Florida. The other half comes from widely scattered areas throughout the country.

Q. So that other half that doesn't come from within the State of Florida all moves by rail on interstate rates?

A. Yes, sir.

Q. Generally speaking, how is the movement of the intrastate materials? That is, by what form of transportation?

A. By rail.

Q. What is the relative movement by what form of transportation outbound from your plant?

A. At the present time about half of our outbound is by truck. The other half is by rail.

[fol. 288] Q. Mr. Roger, do you know whether there is any substantial sales by interstate movement of fertilizer in the area in which you compete?

A. The shipment of fertilizer and fertilizer materials from out of the state points into our area is negligible.

Q. So that the competition with which you are concerned and faced is that of intrastate shipment?

A. Yes, sir.

Q. In your judgment, Mr. Roger, would an increase in the rail intrastate rate on fertilizer and fertilizer materials produce any additional revenue for the rail carrier?

A. It is my opinion that it would divert a considerable quantity of the intrastate movement to trucks.

Q. Do you have any desire, speaking of your own concern, to get into the transportation business as such?

A. We dread it, but we are slowly being forced into it.

Q. What is your view as to whether the particular increase involved in this proceeding would—what effect would that have on your particular method of transportation?

A. Right now we deliver fertilizer by rail at a dollar a ton cheaper than we deliver it as by truck, that is the same material, by our trucks or other motor carriers. If our rates are increased, it will lessen the difference to the extent that most of our customers will demand truck delivery because of the greater convenience to them, the truck mak- [fol. 289] ing delivery to the fields at the time it is needed during their farming operation and we already have considerable difficulty in the sales of our fertilizer because of the fact that there is only a dollar a ton difference. Now, if we have to quote prices delivered by rail that are approximately the same as the truck deliveries, we are going to be forced to use the truck business in a big way.

Q. That, of course, would reduce the revenue you are presently paying to the rail line for their transportation?

A. I should say it would be.

Q. Would an increase of the fertilizer and fertilizer materials rate intrastate, in your judgment, operate to increase any interstate movement of those materials?

A. Well, as the cost of farming per acre increases, there is a general tendency to decrease the number of acres farmed, which will ultimately result in less production of the fruits and vegetables for shipment to northern points.

Q. Do you have anything else to add that has a bearing on the issues in this proceeding?

A. No, sir.

Mr. Wells: The witness is available for cross examination.

Cross examination.

By Mr. Gwathmey:

Q. Mr. Roger, would you be good enough to tell me again the destination you principally distribute your fertilizer? [fol. 290] A. From a line drawn from Okeechobee City to Fort Pierce and an area south of that to Florida City.

Q. Do you distribute mainly to points located mainly on the Florida East Coast Railway?

A. No, sir.
Q. You distribute to some extent to those points?
A. Yes, sir.
Q. Do you sell your fertilizers on a delivered basis?
A. Yes, sir.

Mr. Gwathmey: That's all.
Mr. Wells: That's all.
Comm. Patterson: Are there any other questions?

By Comm. Patterson:

Q. Mr. Roger, when you make these deliveries on demands of the shipper, do you do that with your own trucks or do you employ a for-hire carrier?
A. Mostly with our own trucks.

Comm. Patterson: That's all.

Redirect examination.

By Mr. Wells:

Q. I believe you stated that there was some use by your company of for-hire trucks?
A. Yes, sir.
Q. But the majority of your deliveries is in your own equipment?
A. Yes, sir.

[fol. 291] Mr. Wells: That's all.
Comm. Patterson: Then you are excused.

(Witness excused.)

D. N. Barksdale was sworn and testified as follows:

Direct examination.

By Mr. Wells:

Q. Will you please state your name and address for the record?
A. D. N. Barksdale, Mulberry, Florida.
Q. What is your business?

A. Fertilizer manufacturing.

Q. What general area is your sales territory?

A. The State of Florida.

Q. You deal very slightly in any interstate movement?

A. Not out of our Florida district that I have charge of, we do not.

Q. In that sales territory is there any appreciable volume of sales of the mixed fertilizer that moves interstate?

A. In my opinion there isn't.

Q. And you are familiar with the territory in which you work?

A. The only point is in the extreme west. There is a slight interstate movement up there.

Q. But generally in the peninsula of Florida there is intrastate movement almost entirely?

A. Almost entirely.

[fol. 292] Q. Where do you obtain the materials used in your plants, Mr. Barksdale?

A. We obtain, other than super phosphate which is obtained within the State of Florida, practically 95 per cent of the remaining materials are obtained outside of the State of Florida.

Q. Would there be any difference in the sources from which you obtain your materials if this change in intrastate freight rates should become effective?

A. No, sir, it depends on availability of source of supply.

Q. In general, would your answers be the same to the questions as those propounded to Mr. Reger who preceded you on the stand?

A. Substantially so, yes.

Q. In your opinion, would the increase in the rail freight rate intrastate operate to improve or increase the revenue of the rail carriers?

A. In my opinion as far as our business is concerned, I think we would have less rail movement with an increase in intrastate freight rates.

Q. By the way, how many increases would be affected if the proposed increase were placed on the phosphate, for example?

A. Well, the operation, as the phosphate rock moves into your drier or grinder, that is one movement. Then your

dried produce it moved to an incinerator property for processing into super phosphate. Then it is shipped out to [fol. 293] the dry mixers who in turn use it for the mixed fertilizer and ship it as such for direct application.

Q. In other words, there are four separate and distinct movements?

A. Yes, sir.

Q. The material itself has three movements before it is mixed and moved as a mixed fertilizer?

A. That's right.

Q. Do you have anything to add, Mr. Barksdale?

A. No, sir.

Comm. Patterson: Cross examination?

Cross examination.

By Mr. Gwathmey:

Q. Mr. Barksdale, are you in a position—That is, is your position that you are opposing an increase on the rate of fertilizer materials as well as fertilizers?

A. I am opposing increase in rates on mixed fertilizer and also on super phosphate.

Q. You draw a considerable amount of fertilizer materials in your plant?

A. From out of state, yes, sir.

Q. From out of the state?

A. Yes.

Q. And on that material the rates have already been increased, have they not?

[fol. 294] A. Yes, sir.

Q. Do the out-of-state shippers distribute the fertilizer materials in Florida into Florida in competition with local people?

A. The only competition would be on super phosphate, if it were obtained outside of the state instead of in Florida. Practically all the other materials used are obtained outside, New Mexico, and in the coal mining district, sulphate of ammonia which is a by-product of steel mills and so on, obtained wherever possible, wherever available.

Q. Speaking now of fertilizer, you are advised, are you not, that the interstate rates on fertilizer in general through

out southern territory have received the same increases in rates that the railroads are seeking to have made effective intrastate in Florida. You do know that, don't you?

A. My understanding is that it hasn't been granted in Virginia.

Q. I said interstate?

A. Yes, I am aware interstate rates have increased, but the intrastate rate is not.

Q. Have you made any investigation for the purpose of determining the extent, if any, to which the movement of fertilizer in the South has been to trucks since those rates were put in?

A. I have only made a study in the State of Florida.

[fol. 295] Q. Only in the State of Florida?

A. Yes, sir.

Q. Florida has not yet had any of those increases either on what we call Ex Parte 162 or Ex Parte 166, has it?

A. I think it has. I am not familiar, but I think the one before this was. The one before this 25.

Q. I believe you are right, sir.

Q. And the 25 and six per cent has not been granted. That is my understanding.

Mr. Gwathmey: That's all I have.

Mr. Wells: One other question.

Redirect examination.

By Mr. Wells:

Q. Mr. Barksdale, in your judgment if there were an additional 25 per cent added to the intrastate rate on materials, would there be any increased movement from without Florida to a destination in Florida of materials, fertilizer materials?

A. I don't think it would affect it.

Q. You don't think there would be any additional movement interstate at all?

A. I do not.

Mr. Wells: That's all.

Comm. Patterson: Witness excused.

Witness excused.

B. A. McCown was sworn and testified as follows:

[fol. 296] Direct examination.

By Mr. Wells:

Q. Will you state your name and residence?

A. B. A. McCown, 432 South Orange Avenue, Orlando, Florida.

Q. What is your business, Mr. McGown?

A. Fertilizer manufacturer.

Q. You heard the testimony of Mr. Reger and Mr. Barksdale, immediately preceding you?

A. Yes, sir.

Q. Would your answers to the same questions addressed to them be the same as their answers, substantially?

A. Yes, sir.

Q. In your judgment, if there were an increase in the intrastate fertilizer rate in Florida would that operate to increase the revenue of the rail carriers there from?

A. In my opinion, it would have a tendency to decrease the revenue or income.

Q. Do you have anything else to add, Mr. McCown, to what has been testified to by the other gentlemen?

A. No, sir.

Q. Why do you say it would have the effect of decreasing the revenue?

A. Well, for the reason that the cost to us is about a dollar per ton more as an average to deliver Fertilizer by trucks over the railroad carload freight rate. As an estimate and guess, I would say that the average haul in move-[fol. 297] ments within the State of Florida is from three to three dollars and a half per ton; with 25 per cent increase, you would just about take up the dollar. The truck could perform an express service, and I think there would be a tremendous tendency by consumers and receivers of fertilizer and fertilizer materials to demand truck delivery.

Q. At the present time, in your particular operation, from Orlando, do you use rail or truck for delivery of your mixed fertilizer?

A. Both.

Q. Can you give us the approximate proportion?

A. Yes, sir, we have two operating units. From one of our units 38 per cent of our deliveries move by truck and from the other unit, 68 per cent move by truck.

Q. You referred to a cost of delivery by truck as being a dollar a ton more than by rail. Are you referring to a delivery by truck to what point?

A. To all points.

Q. Well, is that in a warehouse or is it in the fields where the farmer uses it?

A. Both. We deliver both to the field or grove or warehouse.

Q. So that additional cost by truck which you referred to includes delivery to where the buyer would be using it and it would be applied to the citrus grove or truck farm or whatever he might use it for.

[fol. 298] A. Yes, sir.

Mr. Wells: That's all.

Cross examination.

By Mr. Gwathmey:

Q. Do you have any connection with the Virginia-Carolina Chemical Company?

A. Do I?

Q. Yes, sir.

A. Yes, sir, State Manager.

Q. You are State Manager for the Virginia-Carolina Chemical Company?

A. Yes.

Q. I assume you have jurisdiction in Florida, not outside of Florida?

A. Yes, sir, correct.

Q. Are you familiar with the distribution of fertilizer and fertilizer materials in states like Virginia, North Carolina, South Carolina? Do you have knowledge of that?

A. No, sir, I do not. I have been in Florida so long that my operations are confined within the borders.

Q. You can't say to what extent, if any, these rates have gone into effect up there in North Carolina, South Carolina and Virginia? You can't say to what extent the movement has gone to trucks?

A. No, I cannot because it is outside my scope of operations. I wouldn't know.

[fol. 299] Redirect examination.

By Mr. Wells:

Q. By the way, if the increase of rail rates on The Florida East Coast Railway would operate to divert fertilizer tonnage from the East Coast, do you know of any facts or reason of facts that would keep the fertilizer on the rails if the rates were increased?

A. No, sir.

Q. You think if it would divert it in one case in the Florida East Coast, you think it would likewise divert from the Coast Line through the Florida East Coast?

A. Yes, sir.

Recross examination.

By Mr. Gwathmey:

Q. Do you happen to know whether or not the trucks come south through Jacksonville or bringing back a lot of fertilizer and deliver at points along the Florida East Coast Railway?

A. I will answer the question this way: We own trucks and we employ trucks for delivery of fertilizer and they operate within the borders of our state. Now about any out-of-state or any truck coming south from Jacksonville, I wouldn't know anything about it.

Q. You wouldn't know?

A. No, sir.

By Comm. Patterson:

Q. Did I understand from your testimony you delivered this fertilizer to the siding at the station or to the farmer [fol. 300] in that vicinity at the same price, whichever way it was hauled, either by rail or by truck, is that right?

A. Yes, sir.

Q. And that when it is hauled by truck, it costs you a dollar more to deliver it and that you absorb that dollar. Now is that your testimony?

A. In many cases, we do, sir, on account of competition.
Q. On account of competition?
A. Yes, sir.
Q. And if this increase was required in the State of Florida that cost to you would about balance out; is that right?
A. That is correct, sir.
Q. And that is what you don't want to happen, is that right?
A. That's right, sir.

Comm. Patterson: That's all.

Redirect examination.

By Mr. Wells:

Q. That rail rate you were speaking about that you pay is for delivery at what point by rail?
A. By rail?
Q. Yes. You answered the Commissioner a minute ago. I am not sure it is clear as to the point at which delivery was made by rail under the rate you were referring to as the rate it is delivered. Is it to the siding or to the grove or farm? Where the farmer uses it?
[fol. 301] A. By rail?

Comm. Patterson: I believe he said to the siding by rail.

A. Yes, and grove or pasture or field by truck.

By Mr. Wells:

Q. Siding or wherever the rail goes?
A. That's right.

Mr. Wells: That's all.
Comm. Patterson: You are excused.

(Witness excused.)

Mr. Wells: I have some additional witnesses I will put on in regular order.
Comm. Patterson: You may proceed, Mr. Gwathmey.

M. G. SEIGLER was sworn and testified as follows:

Direct examination.

By Mr. Gwathmey:

Q. Will you state your name and address and railroad position?

A. M. G. Seigler, Assistant Comptroller, Atlantic Coast Line Railroad Company, Wilmington, North Carolina.

Q. Have you prepared an exhibit consisting of 1 to 44, inclusive, to show certain information for the Coast Line as well as for several other railroads?

A. I have.

Q. With respect to information for railroads, other than the Coast Line, where did you get your information?

A. It was furnished by each railroad. Such information for the Coast Line, as well as other railroads, is almost [fol. 302] entirely factual information taken from Annual and other reports to the Interstate Commerce Commission and reports to State Commissions.

Q. Were the figures in all the schedules of your exhibit prepared by you or under your supervision?

A. With respect to the Coast Line, yes. With respect to other lines, I have used figures exactly as furnished to me. It is my understanding that figures for all lines are being introduced at this time merely to avoid the repetition of a separate witness for each line putting in the record, information identical in nature.

Q. In other words, they furnished you the information and you are filing an exhibit that is consolidated, is that right?

A. That's right.

Q. On that basis, are the figures in all the schedules of your exhibit correct to the best of your knowledge and belief?

A. They are.

Mr. Gwathmey: May we have a number for identification?

Comm. Patterson: Identified as exhibit No. 1.

(Respondent's Exhibit No. 1, Witness Seigler marked for identification.)

Q. Are schedules 1 to 7, inclusive, of your exhibit so-called [fol. 303] "Rate of Return" statements, respectively for Coast Line, Seaboard Air Line, Florida East Coast, a consolidated statement for those three roads, L & N, Georgia Southern and Florida, and St. Louis-San Francisco Railway, is that correct?

A. Yes.

Q. Will you please explain the nature of these exhibits?

A. Since all of the exhibits contain information identical in nature, I will explain Schedule No. 1 for the Coast Line which will apply to Schedules 2 to 7, inclusive. The first column to the left on Schedule 1 shows the years beginning with 1936 and extending through the year 1948, with averages for the five-year period 1936-1940 and averages for the five war years 1941 to 1945, inclusive. This is followed by the years 1946, 1947 and 1948, which are post-war years.

The next column shows the carrier's book investment in railway property used in transportation service, including cash and material and supplies, at the close of each year shown. The next column shows such investment less accrued depreciation.

Q. Why did you base your rate of return on book investment in railway property used in transportation service?

A. Because it is a matter of common knowledge that similar computations of rate of return are used constantly in proceedings before the Interstate Commerce Commission, as well as by that Commission in its various reports. Proof of its acceptability to the Commission may be found [fol. 304] in the commission's report of July 27, 1948, in Ex parte 166, Increased Freight Rates, 1947, 270, ICC 403.

Q. Please proceed with your explanation.

A. The next column shows total operating revenues for each year as reflected by the books of account. The next column shows operating expenses taken from the same source. Operating ratio is merely a mathematical computation of the ratio of operating expenses to operating revenues. Taxes as shown in the next column are the figures as taken from the audited accounts for each year. Under Net Railway Operating Income the amount is also taken from the books of account and arrived at in accordance

with the Interstate Commerce Commission's accounting regulations. The last three columns are self-explanatory.

Q. Now, you have referred specifically to schedule one, which relates to the Atlantic Coast Line?

A. That's right.

Q. Schedule two to Seaboard and schedule three to Florida East Coast, is that right?

A. That's right.

Q. And chedule four is a consolidation for those three railroads as the three principal railroads, is that correct?

A. That is right.

Q. And from these schedules you can determine the rate [fol. 305] of return earned by these railroads over a period of a year, including the year 1948, is that right.

A. That is right.

Q. Now, the schedules 8 to 14 inclusive, designed to show effect on Florida operating ratio of eliminating increases granted by Interstate Commerce Commission on interstate traffic, years 1947 and 1948, are for the same six railroads mentioned in connection with Schedules one to seven. Is that correct?

A. Yes, sir, except that Schedule 11 is a consolidation of the figures for the three principal lines operating in the Florida peninsula, that is, the Coast Line, Seaboard Air Line and Florida East Coast.

Q. Please explain these schedules, please?

A. My explanation will be with respect to Schedule 8 for the Coast Line. On Line 1, Account 101, Freight, Interstate-Florida, for the years 1947 and 1948 are figures taken from annual reports for those years filed with the Railroad and Public Utilities Commission of the State of Florida.

Q. How did you arrive at the Florida proportion of the interstate freight revenue?

A. All revenues intrastate in Florida are allocated 100 per cent to that State. All interstate freight revenue is apportioned to that state on the ratio of the miles hauled in Florida to the miles hauled in other states.

On line two is an amount showing increases allowed by [fol. 306] the Interstate Commerce Commission on interstate traffic which are included in the figures on Line 1. These figures were arrived at on the basis of percentage

increased furnished to me by our Traffic Department. On Line 3 are shown the total Florida operating revenues for the two years as taken from annual reports to the Florida Commission. Item 4 is a restatement of Item 3 after deducting the increases shown on Line 2. Line five shows total Florida operating expenses as also taken from annual reports to the Florida Commission.

Q. How did you arrive at the operating expenses apportioned to the State of Florida?

A. They were prorated to the State of Florida on the basis of revenues apportioned to that State. In other words, the same percentage of operating expenses was allocated to Florida as the percentage of total freight revenue allocated to that state.

Q. Could you ascertain specifically for the State of Florida the actual operating expenses of handling intrastate traffic in that state, sir.

A. No, sir, it has never been found possible to arrive at such a segregation. For instance, it is a practical impossibility to allocate a proper proportion of the value of rail, ballast, ties and other road material to intrastate traffic or to allocate thereto a proper part of the cost of up-keep. It is also a practical impossibility to allocate to intrastate [fol. 307] traffic its proper proportion of the cost of operating trains all of which, both freight and passenger, contain both interstate and intrastate traffic and many of which originate or terminate in other states. Again it is a practical impossibility to separate terminal costs, such as switching, station, platform and clerical costs and also to allocate to intrastate traffic its proper share of the many expenses that are common to both freight and passenger traffic. This has been well recognized in the decision of both the Interstate Commerce Commission and the courts. In connection with the Alabama intrastate case before the Interstate Commerce Commission, Docket 30015, the Commission in its report and order held that no such meticulous showing was necessary.

Line six on Schedule 8 shows the Florida operating ratio, revenues to expenses, on the basis of revenues which include the increase shown on Line 2. For the year 1947 this ratio was 84.17. Line 7 shows the ratio of operating

expenses to operating revenues for the State of Florida as it would have been without the increases shown on Line 2. It can be noted that without the increases there would have been $101.70 of operating expenses for each $100 of operating revenues.

Q. In other words, do I understand that if the Atlantic Coast Line Railroad Company had not been allowed the interstate rate increases which were made effective, its [fol. 308] operating ratio in Florida in 1948 would have been $101.87?

A. That's right.

Q. In other words, it would cost $101 to operate a hundred dollars worth of revenue?

A. That's right.

Q. Schedules 15 to 21, inclusive, designed to show the effect on a system basis on net railway operating income, and net income, eliminating all increases in freight rates granted by the Interstate Commerce Commission and the several State Commission for the years 1947 and 1948, are also with respect to the six carriers previously mentioned. Is that correct?

A. Yes, sir, except that Schedule 18 is a consolidation of the figures for Coast Line, Seaboard Air Line and Florida East Coast, the three principal lines operating in the Florida peninsula.

Q. Please explain these schedules.

A. They are somewhat similar to Schedules 8 to 14 which I have just explained, except that they take notice of increases granted under Ex parte 162 and 166 on both interstate and intrastate business in all the states through which the Coast Line operates. Opoerating revenues and operating expenses, as shown in the first two columns of Schedule 15 are taken from the books of account. This was also true of Railway Tax Accruals, Equipment Rents, Joint [fol. 309] Facility Rents, Net Railway Operating Income and Net Income.

In the last two columns which show the figures restated to eliminate the increases to which I have referred, it can be noted that all operating revenues are the same as in the first two columns except freight revenue. This is fully explained in the footnote at the bottom of the schedule. The difference between freight revenue as stated on books

of account and as restated in the exhibit, is the aggregate amount of increases allowed under Ex Parte 162 and 166. This was calculated on the basis of percentage increases in each State effective during each month of the years 1947 and 1948 as furnished by our Traffic Department. As can be seen on the last line of this exhibit Coast Line had a net income in the year 1948 of $7,684,913, but if it had not had the benefit of increases in freight rates under Ex Parte 162 and 166 it would not have had that. It would have had a net deficit of $20,297,152.

Q. They are, if I understand, taking what the results would have been if the railroad had not gotten the interstate increases and increases granted by the several states; is that it?

A. That's correct.

Q. You have shown similar figures for the Seaboard and the Florida East Coast, have you not?

A. That's right.

[fol. 310] By Exam. Mattingly:

Q. Before you get off the group of schedules, will you look at schedule 15 the operating ratio there in the first column 1947, then look at the operating ratio on the second line from the bottom on 1947, page one.

A. Year 1947?

Q. Yes.

A. Yes, right at the moment it strikes me it ought to be the same. I don't know just what the difference is, but I've got the correct figures. $87.57 is the correct figure.

Q. Then the figure on schedule one should be changed to that, is that right?

A. That's right. You asked me the question as to whether the operating ratio shown on schedule No. 18 should agree?

Comm. Patterson: 15.

A. 15. Yes, I see. That's right. The figure on schedule one ought to be $87.57.

By Mr. Gwathmey:

Q. Now schedules 22 to 28, inclusive, showing separation of Florida freight revenue between that derived from interstate and that derived from intrastate business, years

1936 to 1948, inclusive, are also for the six lines previously mentioned. Is that correct?

A. Yes, sir, except that Schedule 25 is a consolidation of the figures for the three principal lines operating in the Florida peninsu*al*.

Q. Please explain these schedules.

[fol. 311] A. I will explain Schedule 22 for the Coast Line, which will apply to the others containing similar information.

The exhibit merely shows a separation of freight revenue within the state of Florida between that derived from interstate business and that derived from intrastate business with the total of both for each year 1946 to 1948, inclusive, with an average for the five-year period 1936 to 1940, prewar years, and a yearly average for the five years 1941 to 1945, the war years. The last three, of course, are postwar years.

The last two columns at the right show the percentage of revenue earned on the interstate business as compared with that on intrastate business. For the last year shown it can be seen in the last column to the right that 28.0 per cent of all Coast Line freight revenue earned in Florida was earned on intrastate business.

Q. What does your Schedule 29 purport to show?

A. It purports to show that with respect to Seaboard Air Line and Atlantic Coast Line, the two carriers with the greatest mileage in the Florida peninsula, the traffic density for the State of Florida compared with system density and with system density excluding the State of Florida for the years 1938 to 1948, inclusive.

The first three columns to the left show statistics for the system, the next three columns statistics for the State of [fol. 312] Florida, the next column shows percentage of Florida operated miles to system total miles operated. The next column shows percentage of revenue ton miles in the State of Florida to the system total. The next column shows percentage of ton miles per mile of road in the State of Florida to that for the system. The next three columns show system figures, excluding the State of Florida. The last three columns show the percentage of miles operated in Florida to the system, excluding Florida, percentage of revenue ton miles in Florida to the system, excluding Flor-

ida, and percentage of ton miles per mile of road in Florida to the system, excluding Florida.

Looking at figures for the year 1948, the latest year available, it can be seen that the Seaboard has 60.39 per cent of its sy-tem mileage in Florida after excluding Florida and the Coast Line has 52.76 on the same basis.

As shown for the year 1948 in the last column, the ton miles per mile of road for the Seaboard in Florida amounts to only 69.71 per cent as compared with the balance of the system, excluding Florida, and for the Coast Line such percentage is only 62.93.

Q. Schedules 30 and 31 showing operating revenues, expenses and net railway operating income separately for freight and passenger service, years 1936 to 1948, inclusive, were prepared for the Coast Line and Seaboard with a [fol. 313] consolidation of the figures for both roads in Schedule 32. Is that correct?

A. Yes, sir, that's correct.

Q. What is the purpose of these schedules?

A. Merely to indicate the very substantial extent to which deficits from passenger operations have to be absorbed from freight earnings. It can be noted that for the average year 1936 to 1940, the freight operating ratio was 69 while the passenger operating ratio was 114. The average for the five war years shows a freight operating ratio of 65 and a passenger operating ratio of 66. I think it is well known that the tremendous volume of military traffic is largely responsible for the fact that the railroads were able to make any money on passenger traffic during the war.

As can be readily seen from the statement immediately following the close of the war, the passenger operating ratio in 1946 jumped to 96 and as new private automobiles became more and more available to the public, the passenger operating became more and more. It went up in 1947 to 114 and in 1948, the latest year available, it was 127.

Comm. Patterson: Mr. Gwathmey, would this be a good point to recess until two o'clock?

Mr. Gwathmey: Certainly.

(At 12:40 o'clock a recess for lunch was taken until 2:00 p. m. of the same day.)

[fol. 314] Afternoon Session

M. G. Seigler resumed the stand and testified further as follows:

Direct examination (continued):

By Mr. Gwathmey:

Q Schedules 33 and 34 for the Coast Line and the Seaboard Air Line, and Schedule 35 for both of the roads, are statements showing contribution of intrastate revenues to total system freight revenues and Florida percentage of total intrastate freight revenues, years 1936 to 1948, inclusive. What is the significance of these schedules?

A. They point up the importance of revenues from Florida intrastate traffic. For instance, looking at the year 1948 at the bottom of Schedule 33, it can be seen that 13.4 per cent of Coast Line's total system freight revenues comes from intrastate traffic in the several states, and that of the total system intrastate freight revenues 48.1 per cent comes from intrastate freight in the state of Florida. Schedule 34 for the year 1948 shows that for the Seaboard Air Line 60.3 per cent of its total system intrastate freight revenues comes from the State of Florida. Schedule 35 shows that for both roads combined 53.8 per cent of total system intrastate business is in the State of Florida.

Q. In other words, in the case of both roads, the Florida intrastate revenue is very important, is that correct?

[fol. 315] A. That is correct.

Q. Please explain the purpose of Schedules 36, 37 and 38?

A. These schedules point up the tremendous increase in railroad wages between the year 1936 and the year 1948. Looking at Schedule 36 for the Coast Line it can be seen that in the year 1936 the average straight-time hourly rate for all employees was 56.48 cents. Looking at the bottom line it can be seen that by 1948 this had increased to 122.72 cents per hour. The statement shows that the average annual compensation for employees in 1936 was $1,502. In 1948 this had risen to $3,461.

As shown in the last two columns of Schedule 36 for the Coast Line, using 1936 as an index equal to 100, that for

each $1.00 of straight-time paid in 1936, the same amount of time in 1948 cost $2.17.

Due to the fact that over and above straight-time rates employees are paid large sums of overtime, the exhibit shows that for each $1.00 paid in 1936 for total compensation, the same time in 1948 costs $2.30.

The figures in Schedule 37 for the Seaboard Air Line are substantially the same as those for the Coast Line and the figures in Schedule 38 are merely a consolidation of the figures in Schedules 36 and 37.

Q. What have you to say about Schedules 39, 40 and 41?

A. These are merely to point up the tremendous increase [fol. 316] in Federal payroll taxes since 1937. As can be seen from Schedule 39 for Coast Line, using 1937 as an index of 100, payroll taxes had increased in 1948 to $3.38 for each $1.00 in 1937. As can be seen from Schedule 39 for Coast Line, stating it another way, the average payroll taxes per employee in 1937 amounted to $73.39 and in 1948 the average payroll taxes per employee was $194.94, an index of 266 as compared to an index of 100 for the year 1937.

Attention is directed to the fact that in 1947, total payroll taxes amounted to $4.70 for each $1.00 of such taxes in 1937 and the average payroll taxes per employee in 1947 amounted to $3.40 for each $1.00 in the year 1937.

The reduction in 1948 was brought about by a reduction in the tax rate for unemployment insurance from 3 per cent to one-half of one percent. It is my understanding that this reduction was made for the reason that the balance in the fund for unemployment insurance as administered by the Railroad Retirement Board had become several hundred million dollars in excess of current needs.

Q. Please explain the purpose of Schedules 43, 42 and 44.

A. The purpose of these schedules is to show the effect for the first four months of 1949, as compared with the first four months of 1948, of a seven cents wage award granted to non-operating employees effective October 1, 1948. Such increase was not in the 1948 figures but they are in the 1949 [fol. 317] figures. I might mention at this point that none of these figures purport to show in any respect the cost to the railroads of placing non-operating employees on a five-day w ek effective September 1, 1949.

Looking at Schedule 42, it can be seen that net operating income for the first four months of 1949 was $287,034, less than the same period of 1948, or a decrease of 6.2 per cent. Net income for the first four months of 1949 was $625,816 less than for the first four months of 1938, a decrease of 10.8 per cent.

The information in Schedule 43 shows that for the Seaboard between the two periods mentioned, net railway operating income decreased 12.2 per cent and net income decreased 26.9 per cent.

Schedule 44 is merely a consolidation of Schedules 43 and 42.

Q. Now, Mr. Seigler, in your consolidated statement, exhibit No. 1, you have now particularly referred to the schedule related to the three principal Florida railroads, the Coast Line, Seaboard and Florida East Coast. You have also shown separately for certain other railroads individually such as the Frisco, Louisville & Nashville and so forth. I want to know first, how many miles of railroad does the Frisco operate in Florida and where are the lines located?

A. The Frisco operated 47 and a fraction. I don't have [fol. 318] the fraction. Forty-eight miles from Alabama line into Pensacola.

Q. How many miles of road does the Louisville and Nashville operate and where is that located?

A. 243 miles. It comes into Florida from Florala, Alabama, to Pensacola and runs east from Pensacola to Chattahoochee. It also has a branch between Florala, Alabama, and Crestview, Florida. Also a few miles on a branch line between Geneva, Alabama and Graceville, Florida.

Q. How many miles of road does the Georgia Southern and Florida Railway have in Florida and where is its line located?

A. That is 157 miles and that line branches out from Valdosta, Georgia, I believe it is, and one line runs from Valdosta to Jacksonville. The other, from Valdosta to Palatka.

Q. Now, you might state also what the mileage of the Florida East Coast is in Florida?

A. 575 miles, made up mostly of its main line between Jacksonville and Miami.

Mr. Gwathmey: Will you indulge me to speak to the witness a moment?

Comm. Patterson: All right.

Mr. Gwathmey: Off the record.

Comm. Patterson: Off the record.

(Off the record.)

Comm. Patterson: On the record.

[fol. 319] By Mr. Gwathmey:

Q. Mr. Seigler, in your exhibit No. 1 you have shown the rate of return of the Florida railroads over a period of years. I will ask you if you now have a statement which will show similar information for the railroads in the southern region and excluding the Atlantic Coast Line, Seaboard Air Line and Florida East Coast, for the southern region as a while?

A. Yes, I have.

Q. You do have that?

A. Yes, sir.

Mr. Gwathmey: May we have that marked for identification, Mr. Commissioner?

Comm. Patterson: Let's identify it as Exhibit No. 2.

(Respondent's Exhibit No. 2, Witness Seigler, marked for identification.)

By Mr. Gwathmey:

Q. Mr. Seigler, by comparing the figures on your exhibit No. 2 with the data shown in your exhibit No. 1, does it or does it not indicate that the three principal railroads operating in Florida are more greatly in need of revenue than the southern region carriers, generally speaking?

A. Yes, it does. Specifically, looking at the year 1948, the rate of return on total investment less depreciation for the three principal Florida lines was 2.91. And for the southern region as a whole, exclusive of those three lines, [fol. 320] the return was 4.97.

Q. Have you also a statement showing net railway operating income for the southern region, exclusive of the Atlantic Coast Line and Seaboard Air Line and Florida East

Coast Railway and as compared with those three lines, Four months 1949 compared with four months 1948?

A. I have.

Mr. Gwathmey: May we have this numbered please? Number three, is it?

Comm. Patterson: That's right. Exhibit 3.

(Respondent's Exhibit No. 3, Witness Seigler marked for identification.)

By Mr. Gwathmey:

Q. What does this exhibit show, Mr. Seigler?

A. It shows that the first four months of 1949 of net railway operating income for the southern region as a whole, excluding the Coast Line, Seaboard and Florida East Coast, had a decrease of 7.6 per cent. The three Florida lines for the same period had a decrease of ten percent. In net income for the region as a whole, the decrease was 5.4 per cent and for the three Florida lines the decrease was 17.4 per cent.

Q. In other words, although for this latest period, earnings for the southern carriers generally have declined; earnings of the three Florida roads have declined more rapidly than the others, isn't that right?

A. That's correct.

[fol. 321] Mr. Gwathmey: Mr. Commissioner, we will now offer in evidence the exhibits that have been identified as Numbers 1, 2 and 3 and ask they be received.

Comm. Patterson: If there are no objections, they will be received for the record.

Mr. Petteway: I want to object, Mr. Commissioner. The Florida Commission objects to receiving exhibits schedules 1 to 7 of the exhibit 1 for the following reasons: These exhibits do not contain any segregation of the property investment, between interstate and intrastate operations. That is the first ground.

Second, that these first seven schedules having to do with property investment and rate of return are predicated on the theory that the freight revenues must carry the passenger deficits and that in our opinion is contrary to the law as recognized by the United States Supreme Court and

which so far as we have been able to find, has never been changed and likewise the Supreme Court of the United States has said that in the case of Northern Pacific Railroad Company vs. North Dakota that where the question is as to the profitableness of the intrastate business as a whole under a general scheme of rates, the carrier must satisfactorily prove a fair value of the property employed in its intrastate business and show that it has been denied a fair return on that value.

[fol. 323] There has been no effort here to do that. All of this is predicated on the interstate investment. As a matter of fact, on the entire investment, with no segregation.

We object to receiving schedules one to seven on those grounds and eight to fifteen on the ground that they are wholly immaterial and irrelevant to the issues in this case. They have to do only with the effect on interstate operations of the actions of the Interstate Commerce Commission in awarding certain increases. They do not show anything with reference to intrastate operations in Florida.

Comm. Patterson: The motion is overruled.

Mr. Petteway: It is not necessary to note exceptions, is it Mr. Commissioner?

Comm. Patterson: No, sir. Proceed, Mr. Gwathmey.

(Respondent's Exhibits 1 through 3, inclusive, Witness Seigler, received in evidence.)

Mr. Gwathmey: The witness is available for cross examination.

Cross-examination.

By Mr. Petteway:

Q. Mr. Seigler, if you will turn to schedule one in your exhibit one. Am I correct in understanding that the figures shown in Column two of the schedule one are the balances in the investment accounts at the close of the year shown?

A. The figures in the second column are the balances at [fol. 323] the close of the year in the investment account, plus cash and material and supplies less depreciation.

Q. That is the balance as of the end of the year?

A. That is correct.

Q. Column two is not less depreciation; that is column three?

A. Oh, yes, if you count the year as the first column. You are right.

Q. Now, why did you take the balances of those accounts at the close of the year rather than the averages during the year?

A. Well, for no particular reason except that it has always been customary to take the closing figure at the end of the year.

Q. Do you have the averages for the years shown?

A. No.

Q. You do not?

A. No, I don't.

Q. Now, in arriving at those totals, how much did you include for cash and materials and supplies? For example, for the year 1948 on schedule No. 1?

A. I could give you that with respect to the Coast Line.

Q. Well, these are all your exhibits, aren't they, Mr. Seigler?

A. Yes, but as I testified, they were turned over to me by the other railroads.

[fol. 324] Exam. Mattingly: He just asked you about Exhibit No. 1.

Comm. Patterson: That is limited to the Coast Line.

A. Your question was how much was included?

By Mr. Petteway:

Q. How much was included for cash and how much for materials and supplies.

A. Cash, 14,610,164 dollars.

Q. Materials and supplies?

A. $17,416,639.

Q. Now were those balances at the end of the year also?

A. That's right.

Q. Now you are not in position, I believe you said, to give the same for us with reference to schedules 2 though 7?

A. That is correct. The other lines have accounting witnesses here. They possibly can supply it, if you want it.

Q. Can you tell us generally speaking how the figures in column 2, your investment figures, compare with the Interstate Commerce Commission's evaluation?

A. No, sir, I cannot. I made no such comparison.

Q. You are not familiar with those?

A. No.

Q. The figures in column 1 do not purport to show any segregation between interstate and intrastate operations, do they, Mr. Seigler? Column two, schedule 1.

A. Oh, no. No.

Q. That is your overall investment?

[fol. 325] A. That's right.

Q. Now, on column 8 of schedule 1, which is the amount of net railway operating income you show five million, one hundred twenty-six thousand, seven hundred and fifty-four dollars for the year 1948 for the Coast Line. Can you break that down for us between passenger and freight service?

A. Yes, sir, the net railway operating income from freight was $14,789,515 and from passenger operation there was a deficit of $8,662,761. The amount shown on schedule one, column eight for the year 1948 is the difference between the two figures I just mentioned.

Q. Mr. Seigler, do you know Mr. Anderson, who is Assistant Comptroller of the Coast Line?

A. Quite well.

Q. Is he still one of the assistant comptrollers?

A. That's right.

Q. Are you familiar with his testimony before the Florida Commission in Docket 1677 given on March 31 on the application of the Coast Line to withdraw local passenger trains 39 and 40?

A. No, sir, I have never seen it.

Q. Well, in that testimony he made this statement and I want to find out if you agree with him. I got it from his testimony on page 256 of the Florida record: "It was only during the war period of the years 1942 through 1945 that [fol. 326] there was any money earned on passenger operations, but it can be readily seen that when you support a loss of $9,662,000 and you have to assume that out of a freight earning of $14,789,000 that your passenger loss is absorbing to a large extent considerably in excess of fifty

per cent of what you earn on freight. There are limitations to which a freight revenue can absorb passenger losses." Do you agree with that statement?

A. Well, I don't know that I clearly understand what Mr. Anderson had in mind when he said there was a limitation to which passenger losses can be absorbed with freight.

Q. How large a passenger deficit do you think freight can afford to carry?

A. I don't have any opinion in that regard. It is just what the operation is going to produce.

Q. Now, then, comparing your schedules 1 and 2, can you give us some reason why the showing made by the Atlantic Coast Line is so much worse than the showing made by the Seaboard Air Lines?

A. Well, for one thing, the Atlantic Coast Line is handling just about the same level of traffic that the Seaboard is, but it has a double track line to keep up between Jacksonville and Richmond where the Seaboard has a single track. That is a very large contributing factor. I think the Coast Line,—I am not sure, some of our operating people can tell you—has more expensive branch line operation, possibly, [fol. 327] than the Seaboard has.

Q. You both serve about the same territory?

A. We serve about the same territory, but your net financial result is bound to be where you maintain twice the mileage of tracks, it is bound to be less. We are a double track and the Seaboard is a single track line. It makes a big difference.

Q. How much double track line lies outside of the State of Florida?

A. In miles I can't tell you. I don't know.

Q. Transportation conditions generally are about the same in the territory served by the two lines?

A. I wouldn't undertake to say that. The transportation witness will have to tell you that.

Q. Now, on Schedule No. 8 in item 3, what is the percentage of the total freight revenue allocated to Florida?

A. Well, I can't answer that in terms of percentage. I merely took the revenue for those two years. I don't know what the percentage of it is.

Q. All right, how did you find the operating expenses in item 5 on the same schedule?

A. Well, I think I said in my direct testimony that expenses were allocated to the State of Florida on the basis of revenues.

Q. Mr. Seigler, you testified on direct examination: "In [fol. 328] other words, the same percentage of operating expenses was allocated to Florida as the percentage of total freight revenue allocated to Florida"?

A. That's right.

Q. Now, I want to know what is the percentage of the total freight revenue allocated to Florida?

A. I just told you I haven't got that in percentage, but that is the method in which the figure as shown in schedule 8 was arrived at.

Q. Let me ask this: Does item 3 refer to freight revenue or total revenues?

A. It refers to total of all operating revenues including freight, passenger, mail and express and other revenues.

Q. Didn't you testify that you,—that a certain percentage of total freight revenue was allocated to Florida?

A. But we were talking about freight revenues.

Q. You were talking about this same item?

A. Your revenue for passenger operation is allocated for Florida on exactly the same basis as the freight revenue.

Q. Was your testimony that item 3 covers all operating revenues?

A. Right.

Q. And item 5 covers all operating expenses?

A. That's right.

Q. On schedule 15, if the Coast Line had not had the bene- [fol. 329] fit of increases in Florida intrastate freight rates in the two Florida dockets which correspond to Interstate Commerce Commission dockets 162 and 166, what would have been the operating results shown on this schedule with reference to net railway operating income?

A. Now, let me be sure that I understand your question correctly. The schedule itself shows what the net railway operating income would have been had there been no increases on the entire system, either by the Interstate Commerce Commission or the several state commissions. Now, you are asking me what that figure would be if it were confined

only to such increases as we got in the State of Florida under these?

Q. That's right.

A. I haven't got that figure worked out separately. It is in my working paper somewhere. I got the total figures.

Q. Stated another way, that question would be: What was the revenue derived in those increases. That is what it would amount to. You don't have that answer?

A. No, I don't have that separately. This schedule is a showing for the system.

Q. Do you have the figures which would give us the effect on schedule 15 if the Coast Line had received the full increases on Florida intrastate operations that were granted on interstate operations?

[fol. 330] A. No, I didn't prepare any such figures as that.

Q. No schedule 22 did you use the same basis in allocating revenue to Florida there that you testified about a few moments ago?

A. Yes, that is, all the revenue shown as intrastate was on the traffic moved entirely in the state. That is shown as interstate. So the mileage prorate is on the basis of miles actually hauled in Florida and other states.

Q. By the way, Mr. Seigler, how do you allocate the revenue derived from so-called Florida arbitraries interstate and intrastate?

A. The freight revenue on the Coast Line is allocated on the total.

Q. On the total?

A. On the total, including the arbitraries.

Q. Can you tell us what percentage of the freight operating expenses is allocated to Florida and is incurred in Florida intrastate operations?

A. No, nobody can tell you that. That is impossible.

Mr. Petteway: That's all.

By Mr. Pettijohn:

Q. Mr. Seigler, on schedule 1, according to the reply you made to Mr. Petteway you showed the total cash and materials and supplies, a mileage of $32 million plus. What

is the purpose of including cash and materials and supplies in your rate base?

[fol. 331] A. You've got to have cash and material and supplies to operate on.

Q. Under what theory is it allowed? It is working capital, isn't it?

A. Yes, it is.

Q. Your total operating expenses, including depreciation, is shown to be only slightly over 118 million dollars. That shows you have included in the rate base 27 per cent of that for operating capital.

A. I'd say the figures speak for themselves. They come from the book.

Q. It would be an average of almost three months' operating expense for which you are asking working capital.

A. I say the figures speak for themselves.

Q. Do you know how much the Interstate Commerce Commission allowed for working capital as related to docket 166?

A. No, sir.

Q. You don't know it was less than ten percent?

A. I don't know. I wasn't in on docket 166. I wasn't in on that.

Q. Where did you get the amount of depreciation in arriving at investment less depreciation?

A. From the balance of depreciation reserve account on the general books. You will also find it in the railroad's annual report to the Interstate Commerce Commission.

[fol. 332] Q. Do you know that your annual report does not balance?

A. Oh, yes.

Q. Wait a minute. Taking your annual report——

A. I know what you are thinking, Mr. Pettijohn. Your depreciation and amortization on the Coast Line December 1, 1948, as shown in the annual report balance sheet to the Interstate Commerce Commission is $89,354,493.

Q. That's right.

A. The Balance and depreciation on lease property on account 779 is $5,516. That makes a total of $89,360,009, from which there is subtracted a debit balance in the depreciation reserve in the books of Tampa Southern and Fort Myers Southern because those properties are included in

schedules 2, 11-N and are part of the investment on which this rate of return is figured. Now, taking that off of the figures that I gave you, you come to $89,143,861, as shown on the schedule. That is the reconcilation of it.

Q. Then you have to have the books of Tampa Southern and the balance of them in order to arrive at your investment account less depreciation?

A. That's right. It is necessary because that property is used in the service of transportation but it is not owned.

Q. Now, under your net operating income for the year 1947, where you show $3,049,642, does that note $1,030,000 due to change in accounting for foreign line tickets?

[fol. 333] A. It was either in '48 or '47 that the Coast Line changed its methods of accounting for passenger revenues and it was in either one of those years that there was 13 months' revenue instead of 12 and it was something a little over a million dollars. If you adjusted that out of 1947, of course, your net railway operating income would be a million dollars less.

Q. And your increase in 1948 would be considerably more than shown?

A. No, we wouldn't allocate it to '48. When you change your practice, Mr. Pettijohn, so as to get accounting for passengers on one, you have to have 13 months in the year you changed. In '48 we've got 12 months. That is just what it belongs to be. If I understand your question correctly, if you wanted to kick that million dollars out of '47, you certainly wouldn't add it to '48.

Q. I didn't say that, but if you kicked it out of 1947, which you did not do in the case before the Florida Railroad Commission, you would show instead of increase from three million to five million dollars, you'd show from two million to five million?

A. The difference between this thing and the case you refer to is because it is consolidated and involved with several other railroads. That adjustment wasn't set out separately. Also you will find in the same case some adjust-

[fol. 334] ment for excess profit carry back. These are the figures as audited on the books.

Q. They do not show the effect of the increases applicable in 1948 as far as comparison with increases in 1947?

A. Are you still ta-king about the million dollar passenger item?

Q. That's right.

A. I suppose that is right for comparative purposes, yes.

Q. You know, on schedule No. 3, do you, that in 1947 the net railway operating income of the Florida East Coast includes $1,400,000 federal income tax carry back?

A. Is that schedule No. 3?

Q. Schedule 3.

A. 1947?

Q. Yes, sir.

A. $1,450,000, that is correct.

Q. Now, to clear up a question Mr. Petteway asked you. You first, do you, separate your expenses between freight service and passenger on the Atlantic Coast Line and then apportion to Florida its revenue on the same basis as the system revenue?

A. Yes, sir.

Q. And you do the same with the passenger?

A. Yes.

Q. There is no relationship between expens[illegible]s apportioned and actual expenses which are incurred by the rail-
[fol. 335] road in Florida?

A. There will be some difference. However, that is,—how far that is off from it, I actually don't think anybody could say. That is merely the railroad's method of allocating expenses.

Q. Now, in apportioning your interstate revenue to the State of Florida, you apportion it on the percentage that the mileage transported in Florida bears to the mileage, transported on the shipment over the Coast Line Railroad, do you not?

A. That is right.

Q. You do not follow the Interstate Commerce Commission instructions in Southern Class Rate Case 100, ICC 513, in which the Commission stated that the arbitrary should be credited to the State of Florida, do you?

A. We do not.

Q. Have you any idea as to how much that arbitrary would amount to?

A. No, sir, I don't know.

Q. Would you say it would amount to as much on the Coast Line as on the Seaboard?

A. I wouldn't say.

Q. It hasn't been credited to the Florida operation? The interstate Florida revenues in Florida is understated as reflected on your exhibit?

A. As I testified, the prorate was made on the prorate [fol. 336] including the Florida arbitrary. There may be some part of it, some small part of it——

Q. What do you call a small part?

A. Stated in terms of percentage, I'd say a very small part of the total.

Q. What percentage would say of the freight traffic, handled to and from Peninsula Florida was represented by the arbitrary?

A. I wouldn't say. Our traffic man will have to tell you. I don't know what the arbitrary on that is. It is out of my field.

Q. You still say it is a small amount?

A. I don't know. I would think so because the arbitrary is certainly not anything like say fifty percent of the freight revenue, as I understand it. I am talking about rates and I don't know anything about it.

Q. On page 22 you show that the intrastate percentage of total freight revenue, you assign to Florida, has descended from 24.29 in 1926 to 28.09 percent in 1948. To what do you attribute that decline in relationship?

A. I think that is a proper question for our traffic witness to answer. That is related to actual movement of business. He knows more about that than I do.

Q. Unfortunately, he is not a witness and won't put this exhibit in.

[fol. 337] A. I am merely taking figures from books of account and making an exhibit out of it. As to what produced those figures on the book in the first place, the traffic man can tell you better than I can.

Q. On Schedule No. 30 you show the separation of your revenues, expenses and so forth between freight service and passenger service, do you not?

A. That's right.

Q. Your freight expenses and passenger expenses are

separated under the formula prescribed by the Interstate Commerce Commission, are they not?

A. That is correct.

Q. And then they are apportioned as I previously asked you?

A. They are, yes.

Q. The carriers have never, have they, since the Interstate Commerce Commission prescribed the accounting separation, asked for rehearing of that before the Commission for an amendment to those methods?

A. I couldn't answer that question.

Q. I asked to your knowledge?

A. Not so far as I know.

Q. Do not the railroads in their case before the Interstate Commerce Commission in the mail pay case before the ICC at the present time ask that a full portion of the passenger expenses are reflected on their accounts be apportioned to [fol. 338] railway mail service on a basis of car foot mile basis?

A. You are getting me in a case I don't know.

Q. You don't keep up with those?

A. No.

Q. Well, you in this proceeding, are you not, showing how much of the passenger losses must be absorbed by the freight revenue?

A. That is what schedule 30 shows, yes.

Q. Didn't you say in your testimony that the losses had to be absorbed by the freight revenue?

A. I don't know if I used the term "had to be", but the fact is they are.

Q. They are?

A. There is no other place to absorb them.

Q. Now, if there is no other place to absorb them, you have made no provision or no estimate in these compilations of yours to show how much the passenger revenue would be increased if the railroads received the increase in railway pay they're asking for, have you?

A. You mean mail pay?

Q. That's right.

A. No, I haven't made any figures like that.

Q. But you have pointed out with respect to your exhibit,

that you haven't made, but there will be an increase in your operating expenses for the change to the five-day week basis?

[fol. 339] A. I mentioned that merely in passing. I had no figures on it.

Mr. Pettijohn: I believe that is all. Thank you.

By Mr. Hillyer:

Q. Mr. Seigler, on your schedule 1 there is quite an increase in your total investment account between 1945 and 1946. About roughly $26 million. Was that the time of acquisition of AW&C Railroad?

A. The AW&C was acquired, yes, but if you will notice from the heading of the schedule 1, Mr. Hillyer, those investment figures include the AW&C, all the way from '26 right straight through.

Q. Do you know what that sudden drop,—excuse me, I mean jump, what that sudden jump was attributable to?

A. Not for certain, but I think it was attributable to purchase of new equipment, mostly Deisel locomotives.

Q. Now, turn to schedule 8.

A. Eight?

Q. Yes. I listened attentively to what you said, but I still don't understand where you get the figures here of the Florida revenue in account No. 1, freight interstate, Florida. Will you tell me just where you get that figure from? From what reports?

A. That figure is arrived at on the basis of each interstate waybill separ*eatly*. It involves almost hundreds of thousands of separate calcusations. In other words, the revenue [fol. 340] on every waybill on which freight moves interstate from Florida to some other state or vice-versa, that revenue is prorated separately for each individual waybill on a mileage basis. When you add them all up, that is what you've got.

Q. Now, when you prorate on a mileage basis, you don't take into consideration then what amount may be in that for Florida arbitrary up to the Jacksonville line?

A. No, we take the total revenue and prorate on a mileage basis.

Q. If you have a shipment, say from West Florida to Jacksonville for export, for example, that would have two terminal expenses in it?

A. You mean operating expenses?

Q. I mean to cover terminal operation, how would you apportion that?

A. That is intrastate one hundred percent to the State of Florida.

Q. If it is destined by water beyond?

A. It is still Florida intrastate revenue. All the revenue is allocated to Florida intrastate business.

Q. If you use mileage prorate, how do you distinguish between traffic that has two terminal movements in Florida and other interstate traffic which has only one?

A. It wouldn't make any difference if you had ten terminal movements, if your whole movement is in Florida, it is intrastate in Florida.

[fol. 341] Q. I thought you said interstate if it moved by water.

A. You misunderstood. If the rail movement is all in Florida, so far as this schedule is concerned, that is Florida intrastate, not interstate, revenue.

Q. Is the heading wrong?

A. No, Item 1 is interstate *nad* revenue from such a movement as you have just described from Tampa to Jacksonville for export wouldn't be in there at all because that is intrastate. This is interstate.

Q. Then by interstate you don't have reference to the rate which was applicable at all, do you?

A. I don't think I quite understand that question.

Q. Well, if it moved from West Florida to Jacksonville for export it would not be included in this item 1?

A. That's right.

Q. Even though it was an interstate rate?

A. Yes.

Q. And you make no distinction as to whether the two terminals would occur in Florida or one?

A. We make the allocation one hundred percent Florida intrastate if the whole movement is in Florida regardless of how many terminals it is handled through.

Q. But interstate, you do not?

A. On interstate, the Florida proportion of interstate revenue is prorated out on the revenu from every single [fol. 342] waybill, as I have previously explained and the Florida proportion is added up. That is what you got on schedule 8.

Q. Now, on item 2, just how do you arrive at those increases allowed by the Commission? Do they show on the waybill and are they taken from the waybill?

A. Oh, no. As I testified on direct, the amount of the increase as shown in item 2 was calculated on the basis of percentage increases furnished to me by the traffic department.

Q. And figure is not taken from the waybill?

A. No, sir.

Q. I know you have explained, but I still don't understand how you arrive at Florida operating revenues in item 3. Was that taken from the waybill direct?

A. That item 3, freight revenue, passenger revenue, mail, express and all operating revenues,—they are all assigned to Florida on basis of mileage prorate.

Q. Was the freight portion taken actually from the waybills?

A. Yes, and on passenger revenue, that is calculated for every passenger, whether it is a ticket issued by the Coast Line or New York Central or any other line.

Q. As I understand it, you are taking the position that the item 5 is a mere theoretical *clac*ulation in which you do not concur as an accountant.

A. I didn't say that. I said that item 5, total Florida [fol. 343] operating expenses, was arrived at on the same basis, percentage basis, as the revenues were allocated. I wouldn't say that that is unsound.

Q. I understood that you made your testimony that it was a theoretical basis?

A. It is the basis that the Atlantic Coast Line Railroad uses to ascertain Florida operating expenses, which is required to be reported to the Florida Commission. As a matter of fact, I don't thing any two railroads use exactly the same formula to get at it.

Q. Have you ever made any study yourself of the cost of transportation in Florida?

A. Not specifically as such, no.

Q. Have you ever made any study of any particular commodity movements in Florida to determine the cost?

A. You mean a cost study with respect to certain commodities?

Q. Yes.

A. Well, we have at times made them.

Q. Have you made any?

A. Yes, I have.

Q. Have you make any of lumber in Florida? For example, intrastate in Florida compared with Georgia intrastate?

A. No, sir.

Q. Have you made any cost study as to other commodities of that kind? Pulp wood?

[fol. 344] A. Yes, sir, I made a cost study on pulp wood.

Q. Of Georgia compared with Florida?

A. No, I made the cost study to determine exactly what the cost in relation to revenue on pulp wood handled intrastate in Florida only was.

Q. You have not done that in other states?

A. No,—I made one for North Carolina, yes.

Mr. Gwathmey: I might say both of those studys were made for the purpose of supporting a suit in court in which we are alleging those pulpwood rates are confiscatory.

By Mr. Hillyer:

Q. Do you remember how they compared, the North Carolina cost with pulp wood in Florida cost?

A. Not exactly. I think that the Florida cost is—I am pretty sure the Florida cost per one thousand gross ton miles per car, the final results were worked on per car,—that the cost in Florida was a little higher.

Q. Do you know how the average haul in North Carolina compares with Florida average haul?

A. No, I couldn't tell that without reference to the North Carolina papers.

Q. In item No. 6, where you show Florida operating ratio, that figure includes passenger and freight?

A. Yes.

Q. And based on figures that appear on this schedule 8?

A. That's right.

[fol. 345] Q. Is it not a fact that if the passenger deficits were excluded and if this ratio were computed on freight alone, that the Florida freight operating ratio would be considerably lower than that which you show?

A. I think that answer is already set out back here in the schedule where we separate the operating ratios between freight and passenger.

Q. Schedule 30?

A. Yes, sir.

Q. That is for the system and not Florida?

A. That's right.

Q. Is there any way from these figures we could compute the freight operating ratio in Florida as compared with the system freight operating ratio in 1948, for example?

A. It could be computed, yes.

Q. Have you done that, or do you know whether Florida is higher or lower?

A. I think on the basis that we allocate revenues and expenses—let me see here—It could be computed from the figures in the annual report to the State of Florida; in that report it is not separated from freight to passenger, but it can be easily computed on page 760.

By Mr. Pettijohn:

Q. Mr. Seigler, isn't it a fact that the percentages would be exactly the same on freight and passenger in Florida as for the system, but due to difference in the amount of freight [fol. 346] expenses and passenger, as to Florida, the total would vary?

A. The total would vary because in some of your operating revenues they are allocated one hundred percent to the State of Florida, such things as rents from station privileges. They all go into net operating income and they may vary widely between states, but it wouldn't follow your operating for Florida would be the same as for the balance of the system.

By Mr. Hillyer:

Q. On schedule 31 you show that freight operating ratio, 1948, as 68, is that correct?

A. That is correct.

Q. Now, would not you consider that a very excellent showing for any ratio?

A. I'd say an overall ratio of 68 would be fine, but that is freight only.

Q. Do you know of any year in which the Seaboard's freight operating ratio has been any more than 77, with the exception of the year 1945?

A. Well, the answer to that is right on Schedule 31.

Q. I meant going back even farther in the history. Do you recall any prior to 1926?

A. I don't know. I didn't look at them prior to 1926. Anything I could tell you on that would be a pure guess. I don't know.

Q. The year 1945 showed a high peak. Was that the year [fol. 347] of the reorganization of the company?

A. No, I think the reorganization was August 1, 1946, is when the reorganization occurred.

Q. Were you allowed to write off a good deal of amortization in that year?

Mr. Gwathmey: Mr. Chairman, our next witness will be an accounting officer of the Seaboard. I would suggest the questions Mr. Hillyer is asking now might be appropriate for him.

Mr. Hillyer: I took the Seaboard because I thought he said he was from Seaboard.

Mr. Gwathmey: No, Coast Line, but he compiled this consolidated statement.

By Mr. Hillyer:

Q. Now, the Coast Line Schedule 30, you observe there is no year with the exception of 1945 when the Coast Line hasn't had an operating ratio way below a hundred; is that correct?

A. That is correct when it is confined to the freight operating schedule,—ratio.

Q. Now, is this conclusion proper from that showing that the freight service since 1936 has been yielding more than the expense of the freight service?

A. Yes.

Q. Now, have you any reason to doubt that the freight

traffic has been paying any less—any different ratio than [fol. 348] is shown here for the system?

A. Well, I couldn't tell you that without working it out on the basis of a straight freight operating ratio for the State of Florida. I think that the freight operating ratio for the State of Florida alone would be considerably higher than these ratios for the system as a whole.

Q. Would you contend in the year 1948 your Florida freight revenues were less than your Florida freight expenses?

A. In 1948?

Q. Yes.

A. I think you've got that in the annual report to the State of Florida. Your freight revenue in the State of Florida for the year 1948 were more than the direct freight operating expenses were.

Q. In your series of schedules, have you shown any where the separation between freight and passenger expenses for the Florida East Coast?

A. No, that showing was confined to the Seaboard and Coast Line only.

Q. Could you furnish that and would you be willing to furnish that?

Mr. Gwathmey: What is that?

Mr. Hillyer: He has shown no separation between the freight and passenger for the Florida East Coast similar to the Coast Line on Schedule 30 and the Seaboard on Schedule 31.

[fol. 349] Mr. Gwathmey: We will be glad to furnish the figures for you if you want them. Do you understand what he wants?

A. He wants a statement exactly similar to 30 but made on the Florida East Coast.

Mr. Hillyer: Yes.

Comm. Patterson: When will that be furnished?

Mr. Gwathmey: I imagine it can be done in ten days, can't it, Mr. Seigler?

The Witness: Yes, when I get back to headquarters. We have the Florida East Coast annual report on file with the Coast Line. I can work that up in two or three days.

Comm. Patterson: And furnish it for the record within 15 days, is that satisfactory?

The Witness: Yes, sir, I would say so.

Mr. Hillyer: That's all.

Comm. Patterson: Anything further?

Mr. Wells: Yes, sir.

By Mr. Wells:

Q. Mr. Seigler, please refer to schedule 17 of your exhibit 1. Does the notation "Def." for deficit opposite net operating income which follows the figure 1,855,052 refer to that figure or to the 988,869?

A. It refers to the 988 thousand.

Q. So that there was no deficit under either column one or two as per books of accounting?

[fol. 350] A. Let me be sure about that. I would like to took at the original of it. That is correct. It applies to the 988,868.

Q. Now with reference to your schedule 8——

Exam. Mattingly: Let's get that straight there. Is something to be struck out?

A. No.

Mr. Wells: Mr. Examiner, the word is apparently showed under the second column and it is just a typographical misprint because apparently it does refer to the figure following instead of to the one preceding it.

Exam. Mattingly: The one after 988 thousand refers to 2 million, five hundred thousand?

A. That's right. It is just misplaced. A bad stenographic job.

By Mr. Wells:

Q. With reference to schedule 8, I understand that you took the percentage that the Florida freight revenue bore to the system as a whole and applied that percentage to get the Florida portion of the freight expenses?

A. That's right.

Q. And you took a separate percentage for the passenger revenue and passenger expenses for a particular year?

A. That's right.

Q. Were those same percentages used in '47 and '48 or were there different percentages for each year?

A. Each year stands on its own.

[fol. 351] Q. So that you really have in those two columns four different percentages? That is, for freight, for passenger in each of the two years?

A. I am not sure I clearly understand the question. You say four columns on schedule 8.

Q. It doesn't show there, but you used four percentages in arriving at the item five. One for freight and one passenger for '47 and the other for freight and passenger in 1948.

A. I understand you. That is correct.

Q. On schedule 15 you indicate that per books of account, the operating revenue from express reduced to approximately ten percent 1948 under 1947?

A. Yes.

Q. Do you know of any fact, other than increase in express rates that may have accounted for that reduction?

A. No, I don't.

Q. Similarly on Schedule 24 you show that in the first four months of 1949 the operating revenue from express reduced 36 and one-half percent under a similar period in 1948. Do you know of any fact other than the increase in express rated to account for that reduction?

A. No, excepting possibly despite increase of rates there is a falling off of volume of freight rate. Falling off of both items.

[fol. 352] Mr. Wells: That's all.

Comm. Patterson: Any further examination of this witness? You are excused.

Mr. Gwathmey: I have one or two more on redirect examination.

Comm. Patterson: Proceed.

Redirect examination.

By Mr. Gwathmey:

Q. Mr. Seigler, you were asked some questions as to the net railway operating income of the Atlantic Coast Line

in recent years as compared with that of the Seaboard Air Line. You recall those questions, do you not?

A. Yes, sir.

Q. In connection with its rather expensive program of improvement and rehabilitation of its facilities during recent years, has not the Atlantic Coast Line made rather large charges to maintenance?

A. Yes.

Q. And that would be reflected, would it not, in the net railway operating income of the Coast Line?

A. That is quite true.

Q. Now, in reference to methods of apportioning operating expenses to the State of Florida: You have been asked quite a number of questions upon that subject. Are the railroads in Florida required by the Florida Railroad Commission to make some sort of apportionment of that sort [fol. 353] and report it to the Florida Commission?

A. Oh, yes. They require us to report income earned.

Q. Speaking of total Florida operating expenses, you have shown on your exhibit, for example, schedule No. 12, that whole service, total Florida operating expenses, you were asked the question as to how you arrived at your Florida operating expenses. I will ask you now if the Florida Railroad Commission doesn't require you to make a report of that sort for each of the railroads in Florida?

A. Yes, they require us to report the Florida operating expenses.

Q. That is right. That is what I am asking you. And have they devised a formula or given you instructions for any formula to make any such apportionment?

A. No, sir.

Q. Is the apportionment you have made and used on the exhibits the same as that you use to report this to the Florida Commission?

A. That's right.

Q. Has the Florida Railroad Commission called upon the Florida railroads in connection with this proceeding to make a segregation of operating expenses as between interstate and intrastate traffic?

A. No, sir, they have not.

Q. Do you happen to know whether or not during the [fol. 354] early stages of the carriers' efforts to secure

162 increases from the Florida Commission that Commission at first refused the carriers' petition because it was said they had not made such a separation?

A. That is my understanding.

Q. Do you recall that the carriers thereupon filed a petition for rehearing, do you remember that?

A. I remember that.

Q. Do you happen to know that a conference was held in St. Pete between the members of the Florida Commission and the railroads, my good friend Mr. Pettijohn over there, and the railroads invited the Florida Commission to give them a formula by which they could make this separation and Mr. Pettijohn suggested a formula, and Mr. Ormond, your superior officer, at next meeting put this formula in, exactly like Mr. Pettijohn suggested?

Mr. Pettijohn: Do you know that?

A. Yes.

By Mr. Pettijohn:

Q. I dispute the fact. I never did tell them, give them any formula or anything else. I told them if they didn't want to make a separation, I asked them why they didn't take Dr. Edward's formula and use that.

Mr. Gwathmey: We did it at your suggestion and it wasn't worth two cents.

Mr. Pettijohn: But I didn't give you any formula. I want [fol. 355] that on the record straight.

Wait a minute. I would like to ask another question.

Recross examination.

By Mr. Pettijohn:

Q. You said the Florida Railroad Commission had never suggested a basis of apportioning expenses to the state. Are you sure your statement is correct?

A. Well, I will change that to say that so far as I know, they haven't.

Q. You are not saying that they didn't take the railroads in the southeast and suggest a method and that your Mr. McKay, at that time Comptroller, said if we would

make some revisions, he would suggest to his superior officers that they employ it.

A. As to that, I don't know. Possibly I ought to point out I am a comparitively newcomer with the Coast Line Railroad. I haven't been with them but a very few months. There is a whole lot about it that I don't know yet.

Mr. Pettijohn: That is all.

Comm. Patterson: If there is nothing further of this witness, you are excused.

(Witness excused.)

Comm. Patterson: We will take a ten minute recess.

(Recess had.)

Comm. Patterson: Proceed, gentlemen.

Mr. Gwathmey: In the course of Mr. Seigler's testimony [fol. 356] particularly in connection with his exhibit No. 1, he has referred to statistical data which was supplied to him by representatives of some of these other roads, such as L & N and Frisco and which he has used in order to have a consolidated exhibit. Now the accounting representatives of these roads are present and if counsel for the opposition want ask them any questions, they are available. If they are willing to accept the statements as presented to Mr. Seigler and don't want to cross examine these other accountants, I would like to release them and let them go home.

Mr. Pettijohn: As far as the State of Florida and the Florida Railroad Commission, we don't care to cross examine them because if we find anything that varies with the report, we will ask them to brief it.

Mr. Gwathemy: I understand then these other accountants from these other firms can be excused?

Mr. Ribe: I would like to ask one question, but of you. I noticed those figures were put in. I suppose you limited yourself to class one railroads in Florida, or how did you pick your list of railroads?

Mr. Gwathmey: We have shown separately figures for the Frisco and L & N and G S & F.

Mr. Ribe: Does that complete all of that type of statement you intend to put in there? Will there be any show-

ing made for the other railroads in Florida, the short lines, [fol. 357] Apalachacola Northern and M & B, L O P & G, any of those railroads, do you know?

Mr. Gwathmey: Not so far as I am concerned.

GENE L. PARSONS was sworn and testified as follows:

Direct examination.

By Mr. Gwathmey:

Q. Please state your name?

A. Gene L. Parsons.

Q. Mr. Parsons, you are connected with the Seaboard Air Lines Railroad Company, are you not, sir?

A. Yes, sir.

Q. Did you give the reporter your name?

A. Yes, sir.

Q. What is it?

A. G. L. Parsons, Supervisor of Conditions and Betterment Seaboard Air Lines Railroad, Portsmouth, Virginia.

Q. You have been connected with the Accounting Department of the Seaboard for a number of years, have you not?

A. 30 years.

Q. Have you prepared a statement of one page which you desire to offer in this record as an exhibit?

A. I have.

Q. Was this prepared under your direction and personal supervision and is it true and correct to the best of your knowledge?

[fol. 358] A. It was and it is.

Mr. Gwathmey: May we have marked for identification, Mr. Commissioner?

Comm. Patterson: No. 4.

(Respondent's Exhibit No. 4, Witness Parsons, marked for identification.)

By Mr. Gwathmey:

Q. This exhibit deals with the freight service, transportation expenses on the lines of the Seaboard in Florida as compared with the balance of the system, is that right?

A. It deals with the lines of the Seaboard known as the North and South Florida divisions in Florida, which are practically wholly within Florida.

Q. And do the North and South Divisions of the Seaboard in Florida embrace substantially all of the mileage of the Seaboard in the state?

A. Yes, sir, practically one hundred percent.

Q. Now will you first explain how it is practicable for the Seaboard to make this separate showing as to expenses, on the North and South Florida Divisions as compared with the other portions of the system?

A. Yes, sir, the Seaboard has six operating divisions and it keeps its operating accounts by operating divisions expenses, which are incurred on a particular division. That is, the operating expenses are audited in the accounts of that particular division.

[fol. 359] Q. Will you now look at your exhibit and explain rather fully just what it shows?

A. The caption of this exhibit reads, "Comparison of Freight Service Transportation expenses on North and South Florida Divisions with system and system exclusive of North and South Florida Divisions' Transportation Expenses, year 1948" if you will refer to this exhibit it will be noted by item 1 that the mileage embraced on these two divisions is 56.07 percent of the mileage for the balance of the system. Revenue ton miles produced on these two divisions, item 8, were equivalent to 37.5.

Q. Does that figure indicate the relative density or value of traffic on the lines of the Seaboard in freight as compared with other portions of the system?

A. That is correct.

Q. Go ahead.

A. Freight transportation per 1000 revenue ton miles, item 9, was 139.85 per cent of similar expenses for the balance of expenses. Crew wages per loaded car mile, item 19, were 140.87 per cent of the cost of the balance of the system and the total transportation expenses per loaded

car mile for the system were 153.92 per cent of freight; traffic density measured by revenue ton miles per mile of road, item 21, on these two divisions was only 66.52 per cent of that for the balance of the system. That's all I have.

[fol. 360] Q. In view of what you have said, what conclusion do you draw from this exhibit with respect to conducting transportation in the State of Florida on the Seaboard, as compared with other portions of the Seaboard system?

A. That is undoubtedly that the expense of conducting transportation in Florida is considerably higher than it is on the balance of our system.

Q. Are you able to say that the conditions under which the Atlantic Coast Line, under which they operate in Florida, are substantially the same as those of the Seaboard?

A. They are practically the same.

Q. Both roads serve the same general territory, do they not?

A. Correct.

Q. Both roads have substantial branch line mileage in the state?

A. Correct.

Q. And their operations, generally speaking, are pretty closely alike?

A. Correct.

Q. So that while the Atlantic Coast Line does not keep its accounts in such a way as to enable it to make a showing of this kind, have you any reason to doubt that if such a showing were made, the results would be very similar as those of the Seaboard, as shown on Exhibit No. 4?

A. If they were able to make this same statement, I am [fol. 361] satisfied the outcome would be about like Seaboard's.

Q. Is there anything further you want to say about this exhibit?

A. No, sir.

Mr. Gwathmey: We offer Exhibit No. 4 in evidence.

Comm. Patterson: There being no objection, it will be received for the record.

(Respondent's Exhibit No. 4, Witness Parsons, received in evidence.)

Cross-examination.

By Mr. Petteway:

Q. Mr. Parsons, on your exhibit you show the miles of road operated north and south Florida divisions, 1,491.82. This morning Mr. Broetzman testified miles of road operated as 1500.6. How do you account for that difference?

A. This is North and South Florida. This doesn't purport to represent all of Seaboard's road, but these two divisions are practically altogether in Florida.

Q. What other territory in Florida do you have operations in? How expensive is your operation in other territory in Florida?

A. We operate south from Jacksonville down to Miami, to Homestead. West of Jacksonville to Chattahoochee River to Tampa and St. Petersburg.

Q. Is a part of these operations in the state outside of these divisions?

A. Yes.

[fol. 362] Mr. Gwathmey: I am not sure Mr. Parsons fully understood the question. What you want to know is the mileage of track in Florida not included in North and South Florida Divisions?

Mr. Petteway: That's right. Apparently it is the difference between those.

A. Approximately 70 miles.

By Mr. Petteway:

Q. Are you familiar with Seaboard year book for 1948?

A. Yes, sir.

Q. The report of the company to the stockholders and security holders?

A. Yes, sir.

Q. I wish you would explain to me the difference in some figures. On table 6 of the Seaboard's year book for 1948 that I just referred to, under yard conductors and brakemen for the year 1948 it is shown the figure of $2,858,262.13.

In your corresponding item in account 378 you show a figure of $2,559,594. What is the explanation for that difference?

A. Well, where it is practical, all of the transportation expenses which arise on a division are audited in that division. Yet there are some system charges. I believe on this particular item perhaps we had accruals to the general office accounts representing payroll increases to certain employees which haven't been made at the time but those items [fol. 363] were allocated back to the North and South Florida Divisions on an appropriate mileage basis.

Q. Now, table 6 shows total transportation expense of 59 million, whereas your item 7 shows total transportation expense of 37 million. Would that difference be accounted for by the same explanation?

A. No, it wouldn't and I don't know off hand.

Q. How would you account for it?

A. I don't know off hand just what that difference is made of.

Q. That is a substantial difference, isn't it?

A. Yes.

Q. 13 million?

A. It is a substantial difference. I don't know what that is.

Mr. Petteway: Mr. Commissioner, we'd like to know what that difference is. We would like to have an explanation for it if we could. He could furnish it later.

Mr. Gwathmey: He is referring to a docket not in evidence. I will say this: If it is agreeable to Mr. Petteway, he will investigate the matter and explain to him exactly what he wants to know. Is that satisfactory?

Mr. Petteway: Mr. Commissioner, I would like to know. I have in my hand here—I don't know what it is worth, but it is an official Seaboard report to the stockholders for [fol. 364] 1948 and appended to these reports is a certificate from an accountant firm of Haskins and Steele, in which they say: "In our opinion the accompanying statement of earnings presents a fair picture of the financial condition of the Company December 31, 1948, and the results of its operations for the year ended that day in conformity with

accounting requirements prescribed by the Interstate Commerce Commission."

The Witness: I am sorry I can clear that up.

By Mr. Petteway:

Q. All right.

A. That statement purports to show only freight service expenses of the Seaboard system. I mean exhibit No. 4 purports to show only the freight service transportation expenses. The $37,250,000 to which you refer is the exact amount shown in the annual report to the Interstate Commerce Commission under total freight expense.

Q. All right, thank you. Do I understand that your figures in column one, the first column of figures on exhibit No. 4 on North and South Florida Divisions are arrived at independent of your figures in the next column? There is not percentage relationship?

A. No, sir, they represent actual expenses incurred on North and South Florida Divisions as audited in accounts of that division with the exceptions they are some minor differences in charges of north and south.

Q. Do you recall Mr. Seigler's testimony this morning in [fol. 365] which he said that it had never been found possible to segregate the operating expenses between interstate and intrastate?

A. Yes, sir.

Q. Do you see any inconsistency in that statement or this exhibit or does this exhibit purport to cover interstate and intrastate?

A. Both.

Q. Both? Differentiation of interstate and intrastate?

A. No, sir, this represents the total transportation expense. Both.

Mr. Petteway: That's all.

By Mr. Gwathmey:

Q. These are actual figures?

A. Actual figures.

By Mr. Pettijohn:

Q. Does this include everything south of Jacksonville River Junction line and including that portion of the Bainbridge line from Tallahassee to the border?

A. This 1491 miles shown on my exhibit includes everything embraced in North and South Florida Divisions. The South Florida Division is wholly in Florida. The North Florida Division extends a little way into Georgia, from the Florida-Georgia line up to Bainbridge. That is about 12 or 13 miles. It also includes, I believe, other than that,—there is no mileage outside of Florida encompassed in this Division.

[fol. 366] Q. It doesn't include the mileage going to Fernandina?

A. No, the mileage going to Fernandina is on the Carolina Division.

Q. Did you on behalf of the Seaboard Air Line Railroad make an investigation to determine what percentage of the revenues from and to Peninsula Florida were due on the arbitrary?

A. Mr. Pettijohn, it was done quite a few years ago. I didn't participate in it.

Q. Do you know what the percentage was that they found?

A. Approximately eight percent.

Mr. Pettijohn: That's all, thank you.

By Mr. Hillyer:

Q. Mr. Parsons, on your exhibit 4, item 20, expenses per loaded car mile, there is a difference between North Florida and South Florida Divisions and the system. Let me ask you this: Is it not true that in Florida you have some very heavy tonnage intrastate which the Seaboard performs the origin and terminal delivery services, pickup and delivery services, where you have two terminals, is that correct?

A. Are you talking about heavy tonnage? Are you referring to the phosphate movement?

Q. Phosphate, yes.

A. Yes, that is true.

Q. Isn't it a fact that you have two terminal expenses in [fol. 367] that tremendous tonnage of phosphate rock?

A. That is correct.

Q. Regardless of the rates, as I understand it. It is no reflection of rate? Merely expense?

A. That's right.

Q. Is it not true that that traffic moves for relatively short haul, much shorter than your average system haul?

A. I think that is true.

Q. Isn't it true the loading of that traffic is very heavy?

A. You mean car loading?

Q. Yes.

A. That is true.

Q. Isn't it true that car mile revenue for that traffic is way above your average?

A. No, I don't know that. I don't know what the revenue is on that traffic.

Q. Isn't it a fact that Seaboard has a very heavy traffic moving from Florida to states beyond the Seaboard line where the Seaboard has an origin expense in Florida, but has no terminal delivery expense at destination, merely delivering the traffic to the other line, such as Richmond, Virginia?

A. Yes, but pretty much all of the traffic which we move out of Florida, whereas we only have origin expense, it has to be concentrated to several other yards in Florida before it gets to Richmond for example, we move down to Wild- [fol. 368] wood and later from Wildwood to Baldwin and it has to be reclassified in both yards.

Q. I am speaking of terminal expenses, delivery.

A. That is true.

Q. Isn't it a fact that from the central territory, for example, a lot of traffic comes to Florida way as far as Miami where it has a delivery by the Seaboard. The Seaboard has a delivery terminal expense, but no origin terminal expense.

A. That is correct.

Q. Wouldn't those factors account for a difference in the average transportation expenses per loaded car mile?

A. No, I don't know how you mean. How would they account for the difference?

Q. As compared with your short haul, interloading tremendous tonnage of phosphate and on a long haul you partly bridge traffic on the other.

A. Well, these figures more or less speak for themselves. These are actual statistics which we obtained on these two divisions and actual expenses obtained on these two divisions and they are considerably higher than the balance of the system.

Q. Do you have much coal traffic to and from Florida?

A. Very little, not so much.

Q. Do you have some on your lines in other states?

A. Yes, we have. It is not our largest traffic, of course, we do have some, though.

[fol. 369] Q. In your opinion, would not the consist of the traffic have quite a little to do with the transportation expenses per car mile?

A. What?

Q. Would not the consist of the traffic — quite a little to do with the transportation expenses per car mile? To give you an extreme illustration, if you had all livestock traffic and light loading and expedited trains on one hand and you had all coal on the other, you'd have high car mile expense on your livestock traffic, would you not?

A. Yes.

Mr. Hillyer: That's all.

Comm. Patterson: Do I understand that right that cost for handling traffic per car mile is substantially different due to the character of the traffic? Isn't a car mile a car mile wherever you find it, so far as car handling expense is concerned?

The Witness: The way he put it, Mr. Examiner, that if we had nothing but coal we would handle long trainloads. If we handled nothing but livestock we couldn't handle so many cars in a train.

By Comm. Patterson:

Q. Do you have on the Seaboard any segregated traffic of that sort?

A. No, we are more or less well-rounded out.

By Mr. Hillyer:

Q. Phosphate rock traffic is peculiar to your line and the [fol. 370] Coast Line in Florida, isn't it?

A. Yes.

Q. And perishable traffic from Florida to the East, that long haul traffic in refrigerator cars is characteristic of interstate movement, is it not?

A. Between November and May, yes.

Mr. Hillyer: That's all.

Mr. Gwathmey: One more question.

Mr. Petteway: May I ask a question I overlooked?

By Mr. Petteway:

Q. Mr. Parsons, what is the relationship percentage-wise between your Diesel units and your steam locomotive?

A. You mean in units owned or in mileage?

Q. Mileage.

A. Well, I can't tell you the exact percentage. We are handling 60 per cent or more of our freight traffic with Diesels and a larger percentage of our passenger with Diesel locomotives.

Q. Is your fuel oil and Diesel oil cost a considerable item in transportation?

A. Yes.

Q. Have you experienced reduction in the cost of that fuel in recent months?

A. Diesel fuel oil has been reduced about a cent and a half a gallon in the last several months, yes.

[fol. 371] Q. How much would that figure a barrel?

A. I don't know. Is there 42 gallons in a barrel?

Comm. Patterson: 75 cents.

A. I don't know how many gallons in a barrel.

Comm. Patterson: 52 in most barrels.

A. That would be about 44 cents.

By Mr. Petteway:

Q. Isn't that a substantial reduction in the cost per barrel of fuel oil as compared with the cost last year?

A. I wouldn't say that it was a substantial reduction, Mr. Petteway.

Q. What does a barrel cost you?

A. I don't know. We buy it by the gallon; the prices are quoted per gallon.

Q. What does a gallon cost?

A. The cost now is about eight and eight-tenths cents. The highest it has ever been is ten and four-tenths cents. It has been reduced nearly a cent and a half a gallon.

Mr. Petteway: That's all.

Mr. Pettijohn: I would like to ask a question.

By Mr. Pettijohn:

Q. You are paying eight cents a gallon?

A. Eight and eight-tenths.

Q. We just concluded a case in Tallahassee where they are paying four and three-tenths cents a gallon.

Q. That must be bunker C fuel oil. This Diesel fuel is a [fol. 372] little more refined than that.

Mr. Pettijohn: That's all.

Redirect examination.

By Mr. Gwathmey:

Mr. Parsons, Mr. Hillyer has asked you some questions about materials of heavy loading commodities in Florida, such as, for example, phosphate rock. Would the handling of phosphate rock along with other traffic be reflected in the figures shown at the bottom of your exhibit No. 4?

A. They are.

Q. What does line 17 represent, loaded car miles per freight train mile? Does it show the relative size of the train?

A. That shows the relative size of the train, yes.

Q. That shows the relative number of cars per train?

A. That's right.

Q. Whatever the movement of phosphate rock might have been, it is reflected in these figures?

A. That's true.

Mr. Gwathmey: That's all.

Comm. Patterson: You are excused.

(Witness excused.)

Mr. Gwathmey: Mr. Chairman, this brings us to our traffic testimony and our next witness we expect to have is Mr. Hinnant of the Atlantic Coast Line Freight traffic department. The suggestion has been made that Mr. Hinnant's [fol. 373] narrative statement be marked as an exhibit and

his exhibit be separately marked as another exhibit and be distributed to opposing parties this afternoon with the idea they may cross examine on this data in the morning. That is agreeable to us.

Comm. Patterson: Do you have any more witnesses that you can go ahead with?

Mr. Gwathmey: Would you mind leaving this off the record for a moment?

Comm. Paterson: Off the record.

(Discussion off the record.)

Comm. Patterson: Are you ready to proceed?
Mr. Gwathmey: Yes, sir.
Comm. Patterson: You may proceed, Mr. Browder.

D. S. Browder was sworn and testified as follows:

Direct statement:

Mr. Browder: My name is D. S. Browder, Traffic Manager of Pennsylvania-Dixie Cement Corporation with headquarters at 60 East 42nd Street, New York 17, N. Y. I have, held this position for the last eighteen years and for eight previous years I was connected with various cement companies in the Birmingham district. Seventeen years prior to that time I worked in L&N Railroad in the general freight office, in various positions from rate clerk to chief clerk, also I am an I.C.C. practitioner under paragraph B and that [fol. 374] is a non-lawyer practitioner.

I would like to make it plain I am speaking only for Pennsylvania-Dixie Cement Corporation by whom I am employed.

Now, the Pennsylvania-Dixie Cement Corporation owns and operates nine cement mills in the eastern part of the United States. Now, there is one at Portland Point, New York; there's two at Nazareth, Pennsylvania; one at Bath, Pennsylvania; one at West Winfield, Pennsylvania. We have one in Kingsport, Tennessee, Richard City, Tennessee, Clinchfield, Georgia, and West Des Moines, Iowa. The principal mill involved in this proceeding is our mill at Clinchfield, Georgia.

Now, I would like to offer for identification at this time my exhibit No. 5.

Comm. Patterson: That will be marked No. 5.

(Protestant's Exhibit No. 5, Witness Browder, marked for identification.)

Mr. Browder: Which is a map of the United States showing the location of all the cement mills in the United States. I might say right here that I wasn't able to get as many of these maps as I wanted and if there is anybody who wants one, I will be glad to prepare and send them later. However, my subsequent map contains all information so far as the Southeast is concerned.

On this map I have marked there in red the location of Pennsylvania-Dixie Cement plant. Now this exhibit is [fol. 375] offered to—just to confirm the location of mills which I have marked in red on a subsequent exhibit, I will put in, and it also shows a wide distribution of cement mills and indicates the competitive situation existing between various mills.

Now the natural market of any cement mill is toward the area of lowest production. In the case of our Clinchfield, Georgia, mill it would be to the northeast and to the south. In other words, if we go west, we run into the mills in Alabama and North Georgia and if you go north you run into Chattanooga, Kingsport, Richard City mills and so the area of the mill is toward the south and northeast.

Comm. Patterson: Where are the mills in Alabama?

Mr. Browder: Those black dots are the points.

Comm. Patterson: Black dots?

Mr. Browder: Yes.

Comm. Patterson: The red ones are your mills and the black dots are the other mills?

Mr. Browder: That's right, yes, sir.

Now, Clinchfield, Georgia, plant is 130 miles north of the Florida state-line and was completed in 1925 which was prior to the time that the Tampa plant was constructed. The Tampa plant, I believe, was completed in September, 1927.

Now, it was located at Clinchfield, Georgia, for the specific purpose of serving Florida and to secure the rate advantage [fol. 376] which the geographical location of such a mill

would give us. However, since the construction of the Tampa plant, we have lost that rate advantage we previously held to practically all of the large Florida markets and we are now in direct competition with the Florida plant on the sale of our product at all points throughout the State of Florida.

Now the report of the United States Department of Interior Bureau of Mines shows that the consuming of cement in the State of Florida is greater than any other state in the South.

Now, I would like to offer for identification at this time my exhibit No. 6 which is a statement showing the annual consuming of Portland cement in the State of Florida and also total amount of annual shipments from cement producing points in the Southeast.

Now, you will note that the consuming of cement, even in Florida, has been constantly increasing since the end of the hostilities in the recent war. During 1948—I might say that the Pennsylvania-Dixie Cement Corporation had a very material interest in this whole Florida cement rate situation. And during 1948, approximately 50 percent of all of the shipments from our Clinchfield, Georgia, point were assigned to destinations in Florida. More than 500,000 barrels and it is equivalent to approximately 2500 cars [fol. 377] of 40 tons each. In addition to that, we shipped over 200,000 barrels from our other plant in Kingsport, Richard City, Tennessee, and our other plants on the whole Pennsylvania-Dixie Cement Corporation supplied almost 20 per cent of all the cement used in Florida.

Now, the principal consuming areas in Florida are: first, the metropolitan Miami district. The second is populous area in the central and western part of Florida, surrounding Tampa and third, the populous area extending west from Jacksonville to Pensacola along the Seaboard Air Line Railroad and the L&N. The preponderance of the Pennsylvania-Dixie shipments were delivered in those particular areas.

Now, we are therefore directly interested in the interstate rate to the destination to Florida and also in the intrastate rates between points in the State of Florida, particularly the intrastate rates applying in the cement mill at Tampa, Florida. The interstate rates, including those from

Clinchfield, Georgia, to destination have been increased under Ex Parte 166 by 26 per cent, with fractions disposed of, subject to four cents increase per hundred pounds. These rates have been in effect since January 5, 1948, except as to the maximum increase that was made effective, I believe May 6, 1948.

The Florida intrastate rates had been increased to 20 per-cent without disposing of fractions, but subject to a maxi-[fol. 378] mum increase of four cents per hundred pounds, which was the same as applied to interstate shipments.

These increases became effective April 1, 1948, in the State of Florida. This lower increase in Florida intrastate rates results in a discrimination against interstate rates from our plant in Clinchfield, as well as the Tennessee plants and other interstate plants as shown on my exhibit No. 5.'

Mr. Hillyer: Please ask the witness not to make conclusions of that kind, otherwise we will have to make objections.

Comm. Patterson: You may proceed. Whatever conclusions he is stating are his, anyway, not the Commission's.

Mr. Browder: Now, I would like to offer for identification this Exhibit No. 7 which is a statement showing the Florida intrastate rates on cement on which the increase of 20 per cent under the Florida Railroad and Public Utilities Commission order 1466-a are less than the maximum increase of four cents per hundred pounds.

Comm. Patterson: That will be No. 7 for identification and the one before that is No. 6 for identification.

(Protestant's Exhibits Nos. 6 and 7, Witness Browder marked for identification.)

Mr. Browder: I might add that it was brought out this morning, we were not supposed to say anything about that, but I have added under the right hand column the Ex Parte 168 rates as those are rates actually paying into Florida now and I added it on and showed what the rates would [fol. 379] be under 166 in the third column.

Now, there is no discrimination against the interstate shipment except under the Ex Parte 168 which is not involved here, where the rates in the Tampa plants equal or

exceed 20 per cent loss as both intrastate and interstate rates of 20 cents or more require four cents per hundred pound increase. Therefore, they are on equality and no discrimination is present there. We are, therefore, now operating under increased disadvantage in meeting competition of the Tampa plant and that disadvantage will continue until the intrastate rates are increased or applied from rates on cement from the Tampa mill.

Now, this difference in rates, as shown on this Exhibit No. 7 here, amounts to any where from one cent to, in some cases, as small as a half a cent or four-tenths of a cent in some places. That is just under 166, but when you add 168, it is considerably greater.

Now when that disadvantage is translated into dollars and cents loss to my company, it becomes a very serious matter and the loss will continue to mount until the discrimination is removed.

I figured it on the conservative basis of 300,000 barrels annually into the area involved in the rates, less than 20 cents and figure the disadvantage of averaging one cent per hundred pounds, our loss would amount to approxi- [fol. 380] mately $1,000 per month, $12,000 per year and this disadvantage would continue forever into the future, and be increased by any further increases in the rate.

The more increases we get, the greater the disadvantage will be. Now, I would like to offer for identification at this time my Exhibit No. 8, which is a map of the Southeast, showing the location of the cement plants in the South in red. Those plants are located the same as shown on the previous map. That simply showed the name of the town without any railroads. This is a railroad junction map and is supposed to be about geographically correct.

Comm. Patterson: That will be marked No. 8.

(Exhibit No. 8, Witness Browder marked for identification.)

Mr. Browder: It also shows in a brown line along the bottom of the map, along the northern part of Florida in a dotted line, taking the 162 rates where the rates from Tampa and Clinchfield, Georgia, are equal, that is where our mileage rates meet. The heavy brown line is the present rate which includes 168 and which has been driven fur-

ther to the north. On the small map of Florida on the side, I have shown the areas in the State of Florida within which the rates are less than 20 cents per hundred pounds from Tampa. Now, those three areas and they are the consuming areas I spoke of just now, around Miami and [fol. 381] Central Florida and along the Seaboard Air Line from Jacksonville to Greenville where there is heavy movement of cement. That is the principal movement.

Now to confirm the importance of these particular areas, I made a check of the official list of stations and found in the whole state of Florida there are 1204 carload delivery stations. Within the three areas shown on this map in purple there are 646 stations or 53.6 per cent of all carload delivery stations in Florida within these three areas.

My company has made shipment during 1948 to practically all of the principal locations within these three areas, including Tampa, Sarasota, Bradenton, Lakeland and many others. And my management is opposed to my filing a list to all of the destinations to which our shipments are made.

Now, I'd like to offer for identification at this time my exhibit No. 9, which is a statement showing rates on cement from various producing points in the Southeast to Miami, Florida, and destination is taking Miami, Florida, rates, which extend from Fort Lauderdale on the north to South Miami on the south.

Now, under the present rates——

Comm. Patterson: Just a minute. That will be marked Exhibit No. 9 for identification.

(Protestant's Exhibit No. 9, Witness Browder, marked for identification.)

[fol. 382] Mr. Browder: Under the present rates the difference in the rate from Tampa to Miami and Clinchfield to Miami is 13.94 cents per hundred pounds. Now, if the same basis of rates is applied on intrastate shipments as now apply on interstate shipments, that Tampa rate would be advanced from 16.8 to 19.08 cents per hundred pounds and the difference would be only 11.66 cents per hundred pounds.

Mr. Petteway: Mr. Commissioner, I believe everyone agreed these Ex Parte 168 rates were not involved in this

proceeding and his testimony is dealing considerably with those rates. May we assume that will be excluded from consideration?'

Comm. Patterson: That's right. Anything involving 168 may be disregarded.

Mr. Browder: But the difference there under 162 under the present adjustment is 1.2 cents per hundred pounds difference in the Tampa rate now and what it would be under the interstate basis.

Now, in view of the losses that we are now having in connection with this lower basis of rates from Tampa, we, of course, urge that this situation be corrected as promptly as possible.

Comm. Patterson: Are you talking about actual losses or something you never got to start with?

A. Those are actual to us. In other words, we have——

By Comm. Patterson:

Q. You mean shipping into an area at an actual loss?

[fol. 383] A. Yes, if these rates were on the interstate basis under normal conditions our price would be that much higher.

In other words, we have to sell by the price set by the Tampa mill.

Q. But are you now taking a loss? You can't lose something you never got.

A. No, but we are not making what we would make otherwise.

Q. That's a better statement.

A. That's right. One reason I asked for this action in connection with this matter is the situation that has existed ever since the Florida cement rates were published under the Docket 15806 case back in April, 1928. Now, in every rate increase that then is made by the Interstate Commerce Commission there has been a delay in the increasing of the Florida rates and, in fact, every case it's been ordered in by the Interstate Commerce Commission.

Now, you will note that on page 3 of this statement that during a period from April 14, 1928 to the present time, which is 21 years, 2 and a half months that the increases were authorized to apply to interstate rates on cement by the Interstate Commerce Commission were not applicable

on Florida intrastate for a period of ten years and a few months. Eight months.

Exam. Mattingly: Is that page 3?

[fol. 384] A. Yes, sir.

By Exam. Mattingly:

Q. What exhibit?

A. Exhibit No. 10. I beg your pardon. I want to offer this exhibit No. 10 for identification. That is a three-page statement.

Comm. Patterson: Exhibit No. 10 for identification.

(Protestant's Exhibit No. 10, Witness Browder, marked for identification.)

Exam. Mattingly: Go ahead.

Mr. Browder: As I said, those increases were not applicable on Florida intrastate traffic for a period of ten years and eight months. That period will be further increased until the Interstate Commerce Commission increases under Ex Parte 162 are authorized on Florida intrastate traffic.

Comm. Patterson: That is what we are trying now, isn't it?

Mr. Browder: Yes, it is, but I say this exhibit is just today. In another month from today it will be ten years and nine months. It is increasing all the time.

Comm. Patterson: What we are doing is to try to determine when we get to it whether it will ever go into effect.

Exam. Mattingly: This Exhibit 10 is three pages, is that right?

A. Yes, three pages. Now, on this exhibit, I think that everyone here is familiar with the cases I've got marked on [fol. 385] the front of it and I won't attempt to go into those various cases as to what they are. They are all marked and show the title and the authority for them.

Now at this time I'd like to offer in evidence all of my exhibits from No. 5 to ten inclusive.

Comm. Patterson: There being no objection five to ten, inclusive, will be included in the record.

Mr. Browder: That's all I have sir.

(Protestant's Exhibits 5 to 10, Witness Browder, were received in evidence.)

Cross examination.

By Mr. Petteway:

Q. As I understand you, Mr. Browder, you say the Florida Commission did not increase the rates on cement in Florida docket comparing to ICC 162?

A. Under 162 there was a delay there. They finally did and my statement shows it later became effective in Florida.

Q. That the present rates were increased by 20 per cent in the last order of the Commission?

A. That's right and this statement shows that on April 1.

Q. Do you have any supporting details concerning your shipments of cement in Florida for the last year with you?

A. I have got a list of points to which I shipped, but, as I said, I don't like to put that into the record. It is kind of a trade secret and we don't like to include that, where we ship and the exact number of barrels shipped.

Q. You are not in a position to advise the Commission of the quantity of shipments last year?

[fol. 386] A. Quantity last year?

Q. Yes, in Florida.

A. I can say this: It was over 7 hundred thousand barrels of cement. As I testified, it is over five hundred thousand from our Clinchfield, Georgia, and over two hundred thousand from our other mills. My company doesn't like for me to put in the exact figures we ship.

Q. Can you divide that down and tell how much was shipped prior to the increases?

A. No, sir.

Q. And after the increases?

A. No, sir, that is for the year.

Q. You don't have any supporting details to show the effect on your shipments of this disparity in rate you refer to?

A. I will say it hasn't affected the number of our shipments at all. We have not refused any business on account of it.

Mr. Petteway: That's all.

By Mr. Pettijohn:

Q. On your exhibit No. 9, where you show the present rate to Miami, Florida, from Richard City, Tennessee, to be 36 cents, do you ship against Tampa at 16.8 cents?

A. We did during 1948.

Q. Well, then, if you can absorb that much difference, which is practically 19.2 cents, why can't you absorb it from Clinchfield?

A. I may say we didn't absorb freight on that in that particular shipment. In other words, since July 19, 1948, [fol. 387] we have been governed by the Supreme Court decision in the so-called cement case and we only have one price and we sell at that regardless of where the cement goes. We don't absorb any freight. We can't absorb any. We hope it is going to be a temporary situation since the bill has already passed the Senate and is now up for action in the House, which would legalize the absorption of freight. But up the present and since last July we haven't absorbed it.

Q. You mean the charges for cement from Tampa and Miami is the same as out of Clinchfield?

A. The same.

Q. The same price delivered at Miami that you do at Jacksonville?

A. No, sir.

Comm. Patterson: He says that that was what the Supreme Court wouldn't let him do.

Mr. Pettijohn: That is what I understood him to say, that he had a fixed rate per barrel.

A. At the mill. We add freight rate and sell at delivery price, which is the delivered price plus the freight rate.

Q. How can you sell under those conditions against Tampa?

A. They needed it bad enough where they bought it at that price.

Q. You mean Tampa mill can't supply them?

A. No, sir, the Tampa mill doesn't make as much cement as my exhibit 6 shows was consumed in Florida.

[fol. 388] Q. I will ask you if the Tampa mill can't make

and doesn't make enough cement to supply the communities within its trade area?

A. I don't know what you consider its trade area, not the State of Florida.

Q. Within a hundred and fifty miles of Tampa?

A. I don't know exactly the size of that mill capacity of that mill. I couldn't tell you whether the cement would be used within a hundred miles of that. I don't know what that would be, but I do know consumption in the entire State of Florida.

Q. If Tampa mill cannot take care of the demand for cement in what respect is the disparity of rates operating against you?

A. Right at the present time, as I say, it has not affected us in any way, since this Supreme Court decision and the demand for cement has been as great as it has, we have been able to sell at our regular price. That will not continue as the movement is now falling off. Shipments are considerably less than last year and the time will come when we cannot sell unless we sell at the same price Tampa mill charges.

Q. Don't you meet foreign cement out of Tampa?

A. We know it is there, yes, sir.

Q. And you have to compete with it?

[fol. 389] A. Yes, sir.

Mr. Pettijohn: That's all.

By Mr. Hillyer:

Q. Mr. Browder, your cement rates into Florida, are on what basis?

A. They are on mileage basis prescribed by the Intertate Commerce Commission in Docket 15806.

Q. And do those rates include an arbitrary for the haul south of Jacksonville?

A. Not in all cases. In other words, we have the same arbitrary southbound as the Tampa mill and Tampa has the same arbitrary that we have north.

Q. Are you satisfied with the reasonableness, with the rates on cement from Georgia into Florida which you are now paying?

A. No, sir, we think all the cement rates are too high.

Q. You are familiar with decision in 28300 in which Florida arbitrary would be removed?

A. I couldn't say I am familiar. I know of it. I wouldn't say I was familiar with all that.

Q. How do you ship traffic out of Clinchfield? What mode of transportation do you use?

A. Rail.

Q. Do you ship any by truck?

A. No, sir.

Q. Do any other cement mills in the south use trucks?

[fol. 390] A. So far as I know, they are not. I don't know of any that are.

Q. Have you traveled in that neighborhood recently? In Georgia?

A. No, sir, I haven't been in South Georgia in some time now.

Q. Would you deny that there are specially designed trucks moving cement from Birmingham district to Jacksonville?

A. No, sir.

Q. Trucks with covers?

A. No, sir, I don't know there is or isn't. I didn't say that.

Q. Do you visit your Clinchfield plant?

A. I haven't recently. I know what we are doing. We are not moving from our plant any cement by truck.

Q. Do you know whether you bid on a contract for cement to Palatka, Florida, in fairly recent months?

A. No, sir, I am not familiar in the sales department except on export business.

Q. I am sorry you don't know.

A. I presume that we did. I will say that we try to take business wherever we can find it and in all places in Florida. I can't imagine why we would refuse to bid on some cement at Palatka, but I don't know. I say I am not familiar with all the bids that the company makes on cement.

Q. Does your plant in Clinchfield make the same grade [fol. 391] of cement at Palatka plant?

A. Palatka?

Q. I mean Tampa plant.

A. It is all Portland cement. It is all made and meets

the specifications of the United States Federal Government.

Q. Is the Tampa output as good as yours?

A. I didn't get you?

Q. Is the Tampa output as good as yours in quality?

A. I say they all pass the specifications, made by the same process and pass the specifications. Somebody might like ours better and somebody might like theirs better, but it is all the same product.

Q. Is the Interstate Commerce Commission section order in Docket 15806 still in effect?

A. So far as I know, yes, sir.

Q. Have you sought any relief in that proceeding from what you have complained of here?

A. That has been under 13 Section case. That was figured—all these situations on this Exhibit 10 has been figured, except as to 166, as the only one pending now.

Q. On your Exhibit 9 you show a rate from Tampa to Miami. Do you know the circumstances under which the rate was made?

A. Yes, sir.

Q. What were they?

A. The Tampa mill either threatened to move or did move. I think they actually did move one or two barge [fol. 392] loads of cement from the Tampa mill into Miami and they filed a proposal to publish a rate to meet that water competition, and the rate was made approximately 70 per cent. All of these rates, reduced rates, from the Birmingham district there and other interstate points—I mean,—were made 70 per cent of normal rates which had a minimum of 50 thousand pounds and those rates were subjected to a minimum of 80 thousand pounds, the low rates were.

Q. Do you have any water service available to Clinchfield to Miami?

A. No, sir, but we do from our Pennsylvania plants.

Q. Do you know whether there is any importation of cement since the war at Florida ports?

A. Yes, sir, there's been some. Last time I heard of it was about 280,000 sacks had been brought into Miami.

Q. Are you in competition with that foreign cement?

A. Yes, it is sold in competition with American cement.

Q. Do you have any special equipment for your cement from Clinchfield?

A. Have any special equipment?

Q. Yes.

A. Railway equipment?

Q. Yes.

A. We move a lot of bulk cement in covered hopper cars. [fol. 393] Q. Who owns those cars?

A. The Southern Railway owns considerable of them, the GS&F, the Seaboard Air Line, we use all of them.

Q. Are they assigned to your plant, the one hundred percent return of those cars?

A. No, not exactly assigned to us. They agree to furnish cars for a particular project with hopper cars. And then they keep us supplied with a lot of time. We don't always get the same cars back.

By Comm. Patterson:

Q. These cars in general are interchanged?

A. Yes, sir, the big 70 ton cars.

Q. They are not assigned?

A. No, the other mills all use them, Birmingham, Clinchfield, Richard City.

By Mr. Hillyer:

Q. Are they used for any other commodity other than cement?

A. Yes, sir, many other commodities.

Mr. Hillyer: That's all.

By Mr. Overton:

Q. Mr. Browder, refer to your exhibit No. 8, if you will please. That is the map.

A. That is the map, yes, sir.

Q. That brown dotted line——

A. Yes.

Q. Or rather first, the brown line which you have marked [fol. 394] as the present equal rate line. Now, that is a line drawn to reflect the equality of freight rates, Clinchfield vs. Tampa, is that correct?

A. That is correct.

Q. Now, where would that same type of line be approximately of it reflected equality of cost to the purchaser? Clinchfield vs. Tampa.

A. I don't believe I understand that.

Q. The cost of cement plus the transportation at the destination?

A. Well, I don't know. I don't know what the Tampa mill is selling their cement for.

Q. You don't?

A. No, sir.

Q. Would you accept my statement that it is materially above your base price at Clinchfield?

A. It may be. I don't know what it is.

Q. And if that be true, accepting that, assuming you reach into Florida considerably south of the brown line shown on Exhibit No. 8, at less cost to the buyer——

A. You mean under the present condition? You mean under the Supreme Court decision?

A. Yes, sir. That's right.

Q. That is what you are operating under?

A. That's right at the present time we are operating under that.

[fol. 395] Q. Could you tell me, Mr. Browder, as to your Exhibit 7, the distance involved until we reach the maximum of four cents increase on Florida rates?

A. I could tell you approximately what it is. I couldn't give it to you exactly.

Q. Let me ask you this: The rates shown on Exhibit No. 7, under column headed rates permitted under Order 1443, Ex Parte 162, are the base rates under the cement scales? They do not include the Florida arbitrary?

A. I didn't understand that. What rates are those?

Q. The rates you show on your Exhibit No. 7 under the first column. What are they?

A. Those are the rates that are shown in the Spanning Southern Cement Tariff for application into the State Florida.

Q. Where would they apply in Florida?

A. Well, they would apply only where there was no specific rate published. For instance, if you would make a ship-

ment from Atlanta, Georgia, for instance, back into Florida, these rates would apply.

Q. These rates would reflect the scale of rates applicable for traffic from the Florida plant?

A. I think it does, except where your arbitraries have been changed from Tampa and Clinchfield.

Q. On a rate from Tampa to Daytona Beach, the rate [fol. 396] would include the Florida arbitrary for the full distance, would it not?

A. I don't know. I doubt if it would because your arbitrary from,—it can't exceed the arbitrary applicable in connection with interstate rate from Clinchfield.

Q. It would include the Florida arbitrary from the distance from Tampa to Daytona?

A. No.

Q. Or the distance from the Seaboard Air Line from Jacksonville to Chattahoochee line to Daytona Beach, whichever provided the lower arbitrary?

A. Yes, sir.

Q. And that rate is not shown on Exhibit No. 7?

A. No. The rate is taken from the mileage scale applicable into Florida.

Q. And excluding the Florida arbitrary?

A. As I said, I understand those rates have the arbitrary, but not rates used from, or rather to, specific destinations, because those all changed with the Commission's decision in this,—that was the 15 per cent case, I believe. Yes. That is back in March of '38.

Q. Mr. Browder, you confuse me now. I asked you first as to exhibit 7, whether that column rate included Florida arbitrary. I understood it didn't, that it was Spaninger's scale without the arbitrary?

[fol. 397] A. As I said my understanding is that it includes the arbitrary.

Q. You don't know?

A. It was in the tariff to apply into Florida and would include the arbitrary.

Q. And in the scale there is no place where it shows it includes the arbitrary?

A. It is a different scale of rates which would apply.

Q. The arbitrary is shown separately in the tariff?

A. That's right.

Q. Did you, when you prepared the exhibit, put the scale down and put to it the Florida arbitrary?

A. No, no, sir, because the Florida arbitrary——

Q. Just answer the question.

A. No, sir.

Q. Then the scale you have shown on Exhibit No. 7 does not include the Florida arbitrary?

A. It probably does not. I added no arbitrary to it.

Q. Every rate on cement from Tampa to every destination south of Seaboard Line from Jacksonville to Chattahoochee includes a Florida arbitrary, does it not?

A. Correct.

Q. So rates on Exhibit 7 do not apply from Tampa plant in any instance except to points in North Florida?

A. No, and I would say those are specific rates that are published in the tariff from Tampa to various points. In [fol. 398] other words, there is a seven and a half cent rate from Tampa to some points in the State of Florida that is not a mileage fee.

Mr. Overton: That's all.

Comm. Patterson: You are excused.

Mr. Harrison:

Q. Has there been an abnormal demand for cement for the past two or three years?

A. In certain territories, yes.

Q. And consumers of cement have drawn that from any source from which they could buy it?

A. That is correct.

Q. Now, roughly speaking, cannot you draw a line through Gainesville, Palatka, north and west, and won't that come within the aforesaid maximum increase from Tampa?

A. Sir?

Q. Roughly, can't you draw a line from Gainesville through Palatka to Jacksonville north and west of that and won't all of that territory be affected by the four cents hold down maximum increase from Tampa?

A. No, your rate is less than twenty cents to Lake City, which is north and west of that.

Q. Not the Gainesville, though?

A. Yes, it is less than 20 cents at Gainesville.

Q. Aren't the rates from Clinchfield to Lake City lower than rates from Tampa to Lake City today?

[fol. 399] A. I can check that. You mean you want my rates today including 168?

Q. No, 166.

A. All right. Now, you want the rates to Gainesville: the rate from Tampa to Gainesville increased under 162 is 19 cents a hundred pounds. Now, the Clinchfield rates increased under 162 is 22 cents to Gainesville.

Q. You are two-tenths of a cent out of line to Gainesville. Your four cents hold down, 20 times 19 cents. 3.8.

A. Your 19 cents would be increased to 22 December 8, under 166.

Q. 3.8 cents. That is the increase and maximum increase is four cents from Clinchfield. So your differentiation is two-tenths of a cent. Don't you have advantage of Tampa on all territories west of Chattahoochee River?

A. Yes, sir, west of Chattahoochee, yes, sir.

Q. If you have any discrimination, isn't it confined to a radius of 150 miles around Tampa plant and Miami area?

A. No, I don't understand that. I would understand that all this area,—Atlantic City, we have discrimination where we have full amount of increase and they have only 20 per cent.

Q. Except for a few points in North Florida, where they don't have the Florida arbitrary?

A. That's right.

Q. I think it well to show for the record, if you can, places [fols. 400-401] in Florida and amounts of difference you claim, if you can, by the differences from present rates of Tampa under 166 and your rates under 166 interstate, if you can do that.

A. You mean per barrel?

Q. Per hundred.

A. You want me to take every point in Florida?

Q. I would like to have a statement of rates where you say you are discriminated against from Tampa.

A. I show that on ten. Every point within the blue line of Exhibit 10.

Q. I didn't get the exhibit.
A. I will send you one.

By Mr. Mattingly:

Q. Does that include the total rates, Tampa's and your Pennsylvania ones?

A. That's right and there is no arbitrary from Tampa to Lake City or Jacksonville to Lake City.

Q. Where there is an arbitrary, it is included?

A. Yes, in the statement here.

Comm. Patterson: If there is no further cross examination, you are excused.

(Witness excused.)

Comm. Patterson: We will recess until nine o'clock tomorrow morning.

(At 5:10 o'clock p. m., June 28, 1949, hearing adjourned to nine o'clock a. m., June 29, 1949.)

[fols. 402-403] Met pursuant to adjournment at 9:00 o'clock a. m.

[fol. 404] PROCEEDINGS

Comm. Patterson: You may proceed, Mr. Gwathmey.

C. L. HINNANT was sworn and testified as follows:

Direct examination.

By Mr. Gwathmey:

Q. Please state your name, residence and railroad position?

A. C. L. Hinnant, Wilmington, North Carolina, As-istant Freight Traffic Manager of the Atlantic Coast Line.

Q. Mr. Hinnant have you prepared a narrative statement in the form of certain testimony which you wish to offer in this proceeding, together with an exhibit?

A. I have.

Q. Are the matters contained and set forth in the statement and the exhibit true and correct to the best of your knowledge and belief?

A. They are.

Mr. Gwathmey: Mr. Commissioner, if it is agreeable, we ask that the prepared statement be marked as Exhibit No. ——

Comm. Patterson: No. 11.

(Respondents' Exhibit No. 11, Witness Hinnant marked for identification.)

Mr. Gwathmey: And the Exhibit will be No. 12?

Comm. Patterson: 12, that's right.

(Respondents' Exhibit No. 12, Witness Hinnant marked for identification.)

[fol. 405] By Mr. Gwathmey:

Q. Mr. Hinnant, does the Atlantic Coast Line act as the chairman line of the carriers' committee in matters pertaining to Florida rates?

A. It does.

Q. And as Chairman of the Committee of Carriers for Florida, does the Atlantic Coast Line undertake to present in this case testimony on behalf of the Florida railroads as a whole in dealing with the entire situation?

A. That's correct. The Coast Line as Chairman assumed the larger part of the burden in this proceeding.

Q. Yes, sir, the carriers asked you to have withdrawn from this case the rates on road aggregates, also rates on fertilizer between stations on the Florida East Coast Railway?

A. Yes, sir.

Q. Have you as a matter of fact conveniently computed the change which would result in the carriers' previous computation of revenue losses on account of withdrawal of these particular rates?

A. I have.

Q. Perhaps you'd better give that as a matter of convenience?

A. I have shown at page 8 and a half,—I did not brad

it with the rest of the Exhibit 11, but it had been run in and on that page are indicated the totals which should be excluded from the estimated revenues lost by reason of the two adjustments which are not now included in [fol. 406] this proceeding. On a yearly basis that would be $711,697.45 to be excluded because of elimination of road aggregates. The fertilizer and fertilizer materials, including superphosphate, moving locally on the Florida East Coast Railway amount to $62,499.19.

Q. Have you shown in your prepared statement, Exhibit No. 11, the carriers' estimate of the annual revenue loss as a whole resulting from the failure of the railroads to secure the increases corresponding with interstate increases?

A. On page B-37 of Exhibit No. 12, the total yearly estimated lost revenue is shown to be $1,795,437.34. On page 9 and a half which has been run in on Exhibit 11, I have deducted the two amounts named which should come by reason of exclusion of road aggregates and Florida East Coast fertilizer adjustments, also rather minor adjustments that should be made by reason of transits being given on logs, and the total of all three of those is $777,419.86, deducting that from the sum shown on page B-37 of Exhibit 12, leaves an estimated annual revenue loss of -1,018,017.48.

Q. Were these estimates of revenue loss all computed on basis of a traffic test which the railroads had made for the purpose of this case and which is fully described in your prepared statement?

A. That is correct, sir.

Mr. Gwathmey: Mr. Commissioner, we ask that exhibits No. 11 and No. 12 be received.

[fol. 407] Commissioner Patterson: There being no objection, they will be received in the record.

Mr. Hillyer: May I have an opportunity to object? Mr. Hinnant's testimony comprises about 79 pages of text of very difficult matter. His Exhibit 12 is about 263 pages, more or less. Overnight we were given an opportunity to see the text and the exhibit. At a time well after midnight after applying myself to this particular subject, I finally completed a quick reading of the text. I have been unable to examine the 263 pages of Exhibit and I am not in

position to cross examine at this time nor are we prepared here at this time to rebut that testimony until we have seen what it is.

I ask that any ruling as to the receipt of the exhibit be reserved until we have studied it, until we have presented other objections. I want to present a motion to strike certain portions of that exhibit and the text; from my quick reading of it, I gathered that the witness is attempting to go into the reasonableness per se of a number of specific commodity adjustments and many of those are not embraced in the complaint. We had no notice the reasonableness of those adjustments was to be subject of testimony in this proceeding and we are not prepared to go into those shipments. Ship-ers of a lot of those commodities are not here. They had no notice that a [fol. 408] number of those particular commodity adjustments were to be considered. As to one of them I made a particular inquiry from representatives of the carriers as to whether there would be any testimony to that particular class of goods and as far as they knew, they said there would be none. Those shippers are not here. This, as I understand it, as a purely and simply a general revenue case.

The Interstate Commerce Commission has repeatedly held in cases that the reasonableness of particular rates cannot be considered in a general revenue case. And I move that if this exhibit is received that there be stricken from it all of the text and all of the Exhibit 12 which have a bearing upon reasonableness of specific commodities adjustments. I refer particularly to phosphate rock, Exhibit 11, page 56 to 49, page 74 and portions of the exhibit which match up. I haven't been able to check that yet. Tin cans, page 59 of Exhibit 11 and the rate exhibits in the exhibit 12. Plaster and gypsum lath, page 60 of Exhibit 11 and rate exhibits in exhibit 12. Sulphuric acid, page 62 of the text in 11 and rate exhibits in Exhibit 12. Asphalt, page 63 of the text, pulp board and paper boxes, page 63 and 64 of the text. Brick, page 64, insecticides, page 65. Lime, page 68 and livestock, page 68 and rate exhibits in Exhibit 12 which relate to those commodities.

[fol. 409] There is some space taken up in the text with

a discussion of the rates over parallel routes where the one is interstate and the other is intrastate between the same points. I move to strike that testimony on the ground that an issue of that kind does not belong in a general revenue case and was not raised in this case. If a common carrier over interstate wants to meet rates of intrastate, that is not a matter which should be investigated in this proceeding. It is not in issue and I move to strike all of those portions in respect to competitive routes.

Mr. Gwathmey: Mr. Hillyer has apparently overlooked the fact that the Florida Railroad Commission did not grant the last five percent increase which was authorized by the Interstate Commerce Commission in Ex Parte 166, did not grant that increase on any commodities, class traffic or commodities in Florida. Therefore, all the rates are at issue in this proceeding. I don't know what Mr. Hillyer means talking about this being revenue. It is a 13 Section case. And the Commission, of course, knows under the decision of the Supreme Court, in 13 Section cases it is incumbent upon the carriers to produce reasonableness of rates because as the Court has said in the old Florida loggery case and several other cases, the Interstate Commerce Commission has no authority under Section 13 to order a raising of intrastate rates above a reasonable level. So I submit that that motion is out of order.

[fol. 410] Mr. Hillyer: I understood that the difference between 20 percent and 25 percent was involved as to those commodities not specifically treated by the Florida Commission. In my opinion, these exhibits go far beyond that and apparently are intended to oust the jurisdiction of the Florida Commission of a lot of commodities not in issue with the exception of that five percent which tends to general revenue.

Comm. Patterson: Overruled.

Mr. Petteway: Could I have an opportunity to join the objections and motion and I'd like to point out in reply to Mr. Gwathmey about the five percent: The Florida Commission did not grant—I'd like to point out this case is brought while the Florida Commission still has it under consideration and before final finding has been entered.

Mr. Maurer: I'd like to join the objection. We left here

immediately after the hearing and proceeded to attempt to study Mr. Hinnant's exhibits, worked until way after one o'clock this morning. As far as I am concerned, up to now I have not had an opportunity to read the testimony and not had a chance of properly examining the exhibit and I join in Mr. Hillyer's request that regardless of the action taken on his motion that we be given a proper period of time in which to study the exhibit and to cross examine Mr. Hinnant where we find cross examination necessary.

[fol. 411] Mr. Overton: I want to join in that motion and will add that I personally left here at the close of the hearing and worked on the exhibit now identified as Exhibit 12 and nothing else until after one o'clock. I have not completed that exhibit and I have not had an opportunity to read the text which has been identified as Exhibit no. 11. There is a tremendous amount of detail in Exhibit 12 and in order not only to complete our study, we certainly should be given such opportunity to at least read both the text, his document identified as Exhibit 11 and have an opportunity to study the rate matters and other matters illustrated in the document identified as Exhibit No. 12.

Comm. Patterson: Motion overruled, except that a time for cross examination will be deferred a reasonable length of time to give the parties an opportunity to prepare for cross examination.

Mr. Gwathmey: If the Commissioner please, am I to understand that the exhibits are received?

Comm. Patterson: The exhibits are received, but the time for cross examination will be deferred.

Mr. Gwathmey: Yes, sir.

(Exhibits Nos. 11 and 12, Witness Hinnant, received in evidence.)

Comm. Patterson: You are excused, subject to recall.

(Witness excused.)

[fol. 412] W. W. WOLFORD was sworn and testified as follows:

Direct examination.

By Mr. Gwathmey:

Q. Please state your name, residence and railroad position?

A. W. W. Wolford, Norfolk, Virginia. I am Assistant Freight Traffic Manager of the Seaboard Air Line Railroads.

Q. In addition to and supplementary to the testimony presented by Mr. Hinnant, have you prepared in a narrative form a statement and one exhibit which you wish to submit at this time?

A. I believe it was not one exhibit. It requires more than one number the way I have got it prepared.

Q. Are the matters and things contained in the prepared statements and accompanying exhibits true and correct to the best of your knowledge and belief?

A. Yes.

Mr. Gwathmey: Mr. Chairman, may we have the prepared statement given an exhibit No. for identification?

Comm. Patterson: No. 13.

(Exhibit No. 13, Witness Wolford marked for identification.)

Mr. Gwathmey: Will you just run through the exhibits and number them?

Exam. Mattingly: Off the record.

[fol. 413] (Discussion off the record.)

Comm. Patterson: On the record.

Mr. Gwathmey: I now ask that exhibits that have been identified by the witness as Nos. 13 to 21, inclusive, be received.

Comm. Patterson: The exhibits submitted by——

Mr. Hillyer: May we have an opportunity to examine them before a ruling is made?

Comm. Patterson: The exhibits submitted by Witness Wolford, numbered 13 through 21, inclusive, will be re-

ceived for the record, subject, of course, to objections later.

(Exhibits Nos. 13 to 21, inc., Witness Wolford, received in evidence.)

Mr. Gwathmey: The witness is now available for cross examination.

Comm. Patterson: Cross examination will be deferred with respect to this witness also.

(Witness excused.)

A. P. McCormack was sworn and testified as follows:

Direct examination.

By Mr. Gwathmey:

Q. Please state your name, residence and railroad position?

A. My name is A. P. McCormack and address is Room 206 Louisville and Nashville Railroad Building, 908 West [fol. 414] Broadway, Louisville, Kentucky.

Q. What position do you hold with Louisville and Nashville Railroad?

A. Chief Clerk in the Commerce Branch of the Traffic Department. I have been connected with the L&N Railroad for approximately 40 years, 29 of which have been in the Traffic Department, dealing with rates, rules and regulations pertaining to freight traffic. I am Chief Clerk in the Commerce Branch, which position I have held for the past three years and prior to that, Chief Clerk in the General Freight Office.

Q. Have you prepared several exhibits which you desire to present in this case?

A. I have.

Q. Will you produce these exhibits and distribute them or have they been distributed?

A. They have been distributed.

Mr. Gwathmey: May we take a moment off the record to number these exhibits?

Comm. Patterson: All right. Off the record.

(Discussion off the record.)

Comm. Patterson: On the record. The exhibits submitted by Witness McCormack will be numbered 22 to 28, inclusive, and will be received for the record.

Mr. Petteway: Is that received subject to objections?

[fol. 415] Comm. Patterson: Subject to objections later.

(Exhibits Nos. 22-28, Inc., Witness McCormack, received in evidence.)

By Mr. Gwathmey:

Q. Mr. McCormack, you have not prepared a statement, so I am going to ask you to very briefly run through the exhibits and explain just what they purport to show?

A. Exhibit No. 22 is portraying the situation on carload traffic in general, $20 per car is the minimum on general car loading traffic, with 162 increases; in the right hand column there, you will find about the third paragraph a list "Charges". The first of which, is prefixed by an "a" in parenthesis, $20 per car and that is subject to Ex Parte 162 increases except it does not apply on certain state traffic.

Now this charge is subject to the 166 increases. Where authorized on Florida, it is 20 percent and interstate, it is 25 percent under 166. The charges does not apply to low grade commodities including wastewood. Nevertheless, it is indicative of the fact that we are getting a whole lot less revenue on our wastewood handled than we are getting on general traffic.

Q. Are these charges you have shown on Exhibit No. 22 the minimum per car earnings as provided in the consolidated freight classification?

[fol. 416] A. Yes, sir, except on low-grade commodities that are shown from the list of exceptions there in the last paragraph on the left side of the exhibit.

Q. Now, will you explain briefly exhibit No. 23?

A. Exhibit No. 23 is the state of present and proposed Florida intrastate rates on wastewood for distances up to 3 hundred miles compared with present equivalent of rates approved by the Interstate Commerce Commission in I&S

Docket 1668 for like distances. The present Florida State rate is on 30 miles and under is 2.75 and ranged down to 6.5 cents for 300 miles and over 260, whereas the present equivalent on traffic described on approved in I&S Docket 1668 range from 4 cents to 10 cents for 300 miles and over 260 miles.

Q. Take up exhibit No. 24 please.

A. That is a statement showing rates on resinous waste-wood, carload, to Pensacola, Florida, from Alabama origins and in comparison, the present and proposed rates based on scale applicable on Florida intrastate traffic for the same distances.

Q. Go right ahead.

A. Taking No. 25 it shows the present and proposed rates on wastewood, carload, on Florida intrastate traffic, for single-line hauls compared with the present rates from Atlantic Coast Line Railroad Stations in Florida to Bruns- [fol. 417] wick, Georgia, for representative distances. The numbers in the columns to the left under No. 1 are those which generally apply in the State of Florida and which while they are somewhat lower, they are subject to a minimum weight of 40,000 pounds, whereas the rates to Gainesville and Brunswick to the right under column 2 are numbered column 2, there are 60,000 pounds minimum, with excess in proportion. These don't make for comparison because wast-wood does not usually load to 60,000 pounds or to excess of 60,000 pounds. Our recent findings were that the average is around 50 or 51 thousand pounds, so applying the 60,000 pounds to the 50,000 pounds of wood, you would have a better comparison than this particular statement shows. Taking No. 26, it shows the percentage increases authorized on wastewood by the Interstate Commerce Commission and various state commissions and it speaks for itself. Taking Ex Parte 123 as the index there, it runs down and shows under Ex Parte 166 that we have only gotten the ten percent, whereas, in all other states, you gotten more than that, even in the State of Alabama we have 111.?, and no decision has been made as to those increases in Alabama.

Q. Do you mean that you have only gotten 10 percent increase in Florida?

A. That's right. We have gotten less increase on [fol. 418] wast-wood in Florida than any other states and there is movement in most of the other states.

No. 27 shows tons originated, miles of road operated, revenue ton miles and traffic density on the L&N Railroad for the year 1948 in the State of Florida, compared with other southern states. Our traffic density was less in the State of Florida than in each of the other states that are shown in comparison therewith. Revenue ton miles 160,444,000 and percent is 1.03.

Q. In Florida?

A. Yes. Revenue ton miles per mile of road, 660,889 and the percent is 3.89.

Q. Percentage of what? What do you mean percentage 3.89?

A. Revenue of the tons carried, of the system tons carried.

Q. Percentage?

A. That's right in the southern states. You run across and see these percentages at the very bottom of the exhibit, total 100. Each of those figures shows the relative percentage of the state traffic carrier.

Q. You are confining yourself to traffic handled by L&N Railroad, are you not?

A. Yes, sir, originated tonnage.

Q. Showing relative traffic density in the line of your company in the State of Florida as compared with other portions of L&N system, is that correct?

[fol. 419] A. Yes, sir. Exhibit No. 28 showing operating ratio of L&N Railroad on Florida traffic compared with all traffic on L&N Railroad. Also a comparison of the number of cars and tons carried in Florida vs. all L&N Railroad traffic for the years 1945 and 1948. The purpose for using year 1945 in comparison with 1948 was to indicate a year that we did not have those increases compared with one in which we did. The operating ratio within the State of Florida during the year 1945 as will be seen was 108.87 and notwithstanding the increases, the operating ratio in 1948 increased to 131.64.

Q. That is within Florida?

A. That is within Florida, yes, sir. Now, all traffic in

comparison in 1945 was 74.53 and in 1948 it was 81.8. There was an increase on Florida intrastate of approximately 23 point, whereas on all traffic the increase was approximately seven percent.

Q. Do these figures mean, Mr. McCormack, that in the State of Florida, on the line of the L&N, it is costing your company $1.31 to earn a dollar of revenue?

A. Yes, sir.

Q. Is there anything further you want to say, Mr. McCormack?

A. No, sir.

Q. I think perhaps you'd better explain just what this wastewood is?

[fol. 420] A. Wastewood is stumps and logs and other offfall. Wastewood is not good for anything else. It is used in the processing of turpentine and other naval stores.

Q. Is there a rather substantial movement of this commodity over the line of the L&N in Florida?

A. Yes, sir, we have had quite a movement of it and Mr. Hinnant's statement shows our movement for a representative period would be indicative of what our intrastate movement is.

Mr. Gwathmey: Mr. Commissioner, we offer in evidence the exhibits that have been identified by the witness as Nos. 22 to 28, inclusive, and ask they be received.

Mr. Hillyer: May I inquire the qualifications of the witness for certain exhibits before you make the ruling?

Comm. Patterson: Read back the qualifications of the witness. I think he stated his qualifications.

Mr. Hillyer: He did?

(Qualifications read by the reporter.)

Mr. Hillyer: I want to lay the basis of an objection.

Comm. Patterson: You may proceed to question the witness, Mr. Hillyer.

Cross-examination.

By Mr. Hillyer:

Q. Who made up the figures shown on exhibits 27 and 28?

[fol. 421] A. They were made in the traffic department under my direction.

Q. Did your traffic department make up the figures on Exhibit 28?

A. No, they didn't.

Q. Who made those?

A. Those were taken from our accounting department and furnished to the traffic department in the preparation of these. They are freight figures of tons of traffic——

Mr. Gwathmey: May I make a statement? Mr. Davis, the accountant of the L&N is present here at the hearing and if anybody wants to ask any questions about those figures, he is available.

By Mr. Hillyer:

Q. You are not an accountant?

A. No, I didn't qualify myself as one. I'm traffic manager.

Q. You are not in a position to be cross examined as to how that figure, operating expenses within Florida, was computed, are you?

A. I'm not, no, sir.

Mr. Hillyer: I move you reject Exhibit No. 28 on the grounds the witness is not qualified to present that exhibit.

Mr. Gwathmey: We will call another witness to prove that.

Comm. Patterson: This Exhibit No. 28 will be excluded from the record at the moment. You may proceed, Mr. [fol. 422] McCormack. Are you through, Mr. Hillyer?

Mr. Hillyer: I was only laying the foundation for the objection.

Comm. Patterson: I know, but you weren't through with your examination of the witness.

Exam. Mattingly: Are you through with your objection?

Mr. Hillyer: Yes, sir.

Comm. Patterson: Exhibits 22 to 27, inclusive, by the witness, McCormack, will be received for the record.

(Exhibits Nos. 22 to 27, inclusive, Witness McCormack, received in evidence.)

Mr. Petteway: With reference to cross examination, Mr. Commissioner, the Florida Commission and the State of

Florida would like to reserve their cross examination of this witness until Mr. Ribe and the other rate men have finished their cross examination. I think we might save some time that way.

Comm. Patterson: That is satisfactory.

By Mr. Ribe:

Q. Mr. McCormack, on your exhibit No. 23, in the right hand, last right hand column you show a scale of rates approved by the Atlantic Coast Line in Georgia to Jacksonville, Florida in a certain Interstate Commerce Commission procedure. Do you know whether or not those are the rates actually in effect today on which the traffic is moving from Atlantic Coast Line Railroad stations?

[fol. 423] A. I do not. We just cited that as a scale of rates that the Commission has previously approved on this class of traffic.

Q. Do you know what the scale of rates from Georgia to Jacksonville, Florida, are today?

A. I do not have those, sir.

Q. You show on your exhibit 24 a comparison of rates on resinous wast-wood from Alabama to Florida, and distances of similar distance. Do you know whether the rates you show from Alabama origin actually move in traffic?

A. I have a record from Alabama points. Not all of these but some of them in the recent past. But I can say definitely that there is an interstate movement from Alabama origin to Pensacola, Florida.

Q. You do not know whether or not there is such a movement today?

A. At the present I couldn't say, but there has been in the recent past.

Q. Turning now to your exhibit No. 25, commenting on the 60,000 pound minimum rate in that exhibit, you stated a figure of 52,000 pounds as the average loading of waste-wood. What does that figure represent? Average loading for what period of time on what railroad?

A. On our own railroad. We made a test sometime back. I am speaking from memory. It ran about 51,000 pounds. [fol. 424] That was on our receipts on the delivery basis on the L&N at Pensacola.

Q. Do you know what period of time that test was?

A. I think a year's period.

Q. Do you know what year?

A. I don't recall. I am just speaking from memory.

Q. Do you know what the minimum loading of a car was during that period of time?

A. Well, it was during the time of the ODT restrictions, I can't say. But there is no way to tell. Wastewood, you could put 40,000 pounds. It all depends on what kind of wood you use. I have seen them load branches and bows; I don't think you could get 40,000 pounds and still fill the visible capacity of the car, which you could do under ODT.

Q. Do you know what the maximum loading during that period of time was?

A. On wastewood?

Q. Yes, sir.

A. I couldn't tell you that.

Q. Do you know what proportion of the cars moving during that period of time contained a load of 60,000 pounds or more and what proportion contained loads of less than 60,000?

A. I didn't attempt to develop that.

[fol. 425] Q. Did you not know that the loading varies rather widely and a simple average is not indicative of what the average movement actually is?

A. I would say the average is something you'd have to *guage* the revenues by because you get paid off on the basis of what you haul. If you handled so many 40,000 pounds and so many 60,000, and you averaged it up and you'd get paid per car on the basis of average loading.

Q. Have you made an attempt to compare 60,000 pound rate from the Atlantic Coast Line and Seaboard Railway station from Florida to Gainesville or Atlantic Coast Line Stations in Florida to Brunswick with similar charges to Pensacola, Florida?

A. I have not.

Q. Are you here asking this Commission to require an increase in the rates to Pensacola which would require the receiver at Pensacola, Florida, intrastate to pay higher charges per car than are now voluntarily assessed from stations in Florida to Brunswick, Georgia?

A. If that is the result of getting the increase we are asking for, I'd say yes to your question.

Q. Turning now to exhibit No. 27, you show revenues and ton miles per mile of road in the State of Florida, 660,889. Going back to your exhibit No. 23, you show these rates that are here proposed for application with Florida. Have you [fol. 426] made any inquiry to determine whether or not the rates that you are now proposing, asking for in this proceeding, will continue to move this traffic by rail?

A. I don't know how else it could move if the rates are $11 a car, you couldn't get anybody to haul it but a railroad.

Q. You have made no investigation of that?

A. No, sir. The charges are so low that we don't have any feeling at all they will be diverted to any other form of traffic.

Q. Do you know some has already been diverted?

A. I haven't heard of it unless it is short hauls where there wouldn't be rail service available.

Q. Now, you have only shown in your exhibits rates from the L&N origins proper. Do you know whether or not there is any movement or any important movement from the L&N connecting lines in Florida? Or originate at the Seaboard, Apalachacola Northern or Marianna-Blountstown?

A. I do not. These were my own rates here. There has been some movement off our connection but it hasn't been important. I wouldn't class it as that.

Q. Do you class that as important?

A. With respect to the amount of tonnage with connecting lines compared with what is originated on our own railroad, no.

[fol. 427] Q. Your opinion is that most of the traffic is originated on your own railroad?

A. I understand the bulk of it came from local stations on the L&N railroad.

Q. Do you know what scale of rates or what rates apply on traffic from origins beyond the L&N? For instance on Apalachicola Northern?

A. I couldn't——

Q. Apalachicola Northern in connection with L&N to Pensacola?

A. I understand it applies generally. I couldn't say what rates are actually published without looking at the tariff.

Q. Do you know whether or not the scale of rates shown on Exhibit No. 23 is now applicable to Florida intrastate and restricted to, restricted solely to single-line application?

A. It applies single line and joint line, too, as I understand it. It is a common tariff and applies over the road over which it travels.

Q. We will say it is a single line and has no application on joint line traffic——

Exam. Mattingly: Off the record.

(Off the record.)

Mr. Ribe: That is all.

By Mr. Pettijohn:

Q. Turn to Exhibit No. 27, please. What significance has your percent 3.89 on line 17 under Florida?

A. What was that question?

[fol. 428] Mr. Pettijohn: Please read the question.

(The question was read by the reporter.)

A. The significance of that is that we get less revenue from Florida traffic than from any other state traffic in the South.

Q. That doesn't refer to revenues, does it?

A. No, but that is the significance of it. You asked the significance of it.

Q. Let's see if that is what it means. In order to arrive at 660,889 revenue, you divide the revenue ton miles on line 12 by the miles of road operated on line 10, do you not?

A. Yes.

Q. Well, now, will you turn to——

Exam. Mattingly: Wait a minute, revenue ton miles is on line 10.

Mr. Pettijohn: Did I say 11? Excuse me.

By Mr Pettijohn:

Q. Will you turn to the total column and divide the revenue ton miles on line 12 by the total miles operated on line 10?

Comm. Patterson: Have you done it, Mr. Pettijohn? If you have——

Mr. Pettijohn: Yes, approximately 3,540,000.

Exam Mattingly: All right. Mr. McCormack, Mr. Pettijohn says he has made that mathematical calculation. You are perfectly willing to agree he can divide a figure by [fol. 429] another?

A. Yes.

Exam. Mattingly: Take his figure.

By Mr. Pettijohn:

Q. Then your traffic for the road is 3,540,000 tons instead of 17,010,123, is it not?

A. It should be on that basis.

Q. Well, your 17,010,000 is simply an addition of revenue ton miles per mile of road through the states you operate?

A. That bears out by taking that across, opposite line 14, 15, 16.

Q. What does it really mean?

A. The significance of it shows that we are getting less per ton in Florida traffic than the other traffic that we have handled in the other states. I will reiterate.

Q. Doesn't it really show line No. 15, doesn't it really show a comparison of your traffic density per mile of road in Florida with the other states and when you come to compare it with the system, you should compare it with 3,540,000 instead of with 17,000,000?

A. That's right.

Mr. Pettijohn: That's all. Thank you.

Exam. Mattingly: What was that figure, the correct figure on line 15 for Florida?

Mr. Pettijohn: 3,540,000.

Exam. Mattingly: How is that figure arrived at?

[fol. 430] Mr. Pettijohn: By dividing 15,595,029,000 by 4,406.36.

Exam. Mattingly: What I was talking about particularly was Florida.

Mr. Pettijohn: That is ascertained by dividing line 12 under Florida by line 10 under Florida.

Exam. Mattingly: And the correct figure is five or six times more than they have down here?

A. No, that figure is correct as far as I can see under Florida, but the figure under the total column of 17 million plus, is absolutely in error and is meaningless and instead of that should have about 3,540,000.

Exam. Mattingly: All right.

Mr. Pettijohn: That's all I have, thank you.

Comm. Patterson: Any further cross-examination?

By Mr. Hillyer:

Q. Mr. McCormack,

A. Yes, sir.

Q. Will you describe your main line in the State of Florida?

A. Our principal main line in the State of Florida, is from Flomaton Junction, the point the main line crosses into the State of Florida, east of there and runs to the Chattahoochee, Florida.

Q. What is the largest city or town served by that line?

A. Pensacola, Florida, of course.

Q. You said Flomaton to Chattahoochee. What is the largest city on that line between Flomaton and Chatta-
[fol. 431] hoochee? It Pensacola the only city of any size served by that entire line?

A. Of any considerable size, yes, sir, we have got Marianna, and some others that have sizeable population, but nothing compared with Pensacola.

Q. And at Chattahoochee merely connects with the Seaboard Air Line there that runs to Jacksonville?

A. That's right.

Q. Do you have passenger service on that line?

A. That's right.

Q. Do you know the average speed of your best passenger train on that line?

A. What? Do you know the average speed of the best time you have?

The Witness: May we have a short recess, please?

Comm. Patterson: We will take a short recess.

(Recess had.)

Comm. Patterson: You may proceed with the cross-examination.

By Mr. Hillyer:

Q. I was asking you about the scheduled time of operations of the passenger trains on your Florida line. Is it not a fact that is a very slow service and poorly patronized?

A. That's right.

Q. Isn't it a fact that in order—that in comparison with other states of the South your line has branch lines and [fol. 432] cross lines on which there is low traffic density?

A. Yes, we have some that have low traffic density.

Q. Isn't it a fact that most of your heavy traffic density moves in a north to south or south to north direction rather than directly east to west?

A. That's right.

Mr. Hillyer: That's all I have.

Comm. Patterson: Any further cross-examination? You are excused.

Mr. Gwathmey: Pardon me. May I ask one?

Redirect examination.

By Mr. Gwathmey:

Q. Mr. McCormack, will you please look at your exhibit No. 27. Do you have it before you?

A. Yes, sir.

Q. On line 17, in which you show some percentages and explain exactly what you mean by those percents?

A. Well, those percentages indicate the revenue ton miles in the several states in the south which we operate. Florida, for instance, 3.89, is that percentage of the tonnage that was handled over the railroad in the six states named in the heading.

Q. Well, pardon me, Mr. McCormack, isn't what you have done this: You show in the last column on the right a total of 100?

A. Yes, sir.

[fol. 433] Q. Is that the total of the percentages shown in the other column?

A. Yes, sir.

Q. And is the purpose to show how Florida net revenue tons per mile of road compares with corresponding figures in other states in which the L&N operates?

A. That's right.

Q. So that if you have a total of 100 percent, you find that Florida is 3.89 percent as compared with Alabama 15.47 percent?

A. Yes, sir.

Q. So that shows the relationship from the standpoint of net revenue tons per mile of road between Florida and Alabama, for example?

A. Yes, sir.

Q. And on there as to Georgia, Mississippi, Tennessee, Kentucky; is that right?

A. Yes, sir.

Mr. Gwathmey: All right.

Exam. Mattingly: Let me ask just a question to see if I've got this thing straight or not.

By Exam. Mattingly:

Q. On line 15 of exhibit 27 is the total of 17 million over in the last column the sum of each item for the different states, crosswise in line 15?

A. That's right. It is the sum of the six figures shown [fol. 434] across under each of those states in the head.

Q. Now, the 3.89 percent, under Florida, does that represent the percentage which 660,889 is of 17 million, ten thousand odd?

A. Not necessarily. 3.89 represents the amount 660,889 is of 17 million on the right.

Q. That is just what I asked you and you say it is true as to each of the other states?

A. Yes, sir.

By Comm. Patterson:

Q. You mean by that Florida contributes 3.89 percent of the total business of the L&N in the states indicated here?

A. Yes, sir.

By Mr. Pettijohn:

May I ask a question?

Cross-examination.

By Mr. Pettijohn:

Q. The total figure 17,019,123 does not represent the revenue ton miles per mile of track for the L&N Railroad, does it?

A. That was stated here. I'd have to check it out and if there is anything different, and you say there is a difference, I'd have to verify it.

Q. Can't you merely divide 15,595,000,000 by 4,406 and see yourself it doesn't give you that?

A. At a glance, I'd say it didn't.

Q. What you have done is added traffic density for each [fol. 435] mile of road through each state you operate to get a total?

A. That's right.

Q. And what does it mean?

A. It means that the total as compared to the separation in each state would indicate one state is producing more tonnage than the other.

Q. You don't get the average density per mile of road of a system by adding the average density that obtained in each state, do you?

A. No.

Q. That is what the figure shows here, isn't it?

Exam. Mattingly: May I ask a question?

By Exam. Mattingly:

Q. Mr. McCormack, the L&N operates in Louisiana, doesn't it?

A. Yes.

Q. Have you shown Louisiana?

A. Not here, no, sir.

Q. Therefore, it does not purport to show revenue of the L&N system?

A. No, sir, just in those states.

By Mr. Pettijohn:

Q. Is 4,000 miles of track, or miles of track operated in the state shown on top of the exhibit?

A. That's right. In those states we have shown that. that is the mileage, 4,406.36.

Q. All right, then leave the system figure out of it and [fol. 436] say for those states. What is the revenue ton miles per mile of road, for the 4,406 miles shown under the total of this exhibit?

A. 17,010,123 miles.

Q. It doesn't show that for that at all, does it?

A. You said the revenue ton miles per mile of road?

Q. Yes.

A. That is opposite 14, 15 and 16. You've got 17,010,123 is your total.

Q. Well, now, how do you find the revenue ton miles per mile of road?

A. By dividing your mileage into your revenue tons.

Q. Revenue ton miles?

A. That's right.

Q. And that 17 million is not produced in that manner?

A. Apparently not.

Q. What you do, you compute it under different states under one method, but you don't follow the correct method in producing it under the total column?

A. That is what it appears here, but the result doesn't change any when you are speaking of percentage. The relativity of the tonnage handled is what we are trying to portray here, not the total tonnage.

Q. That is based upon the 17 million plus?

A. That's right.

[fol. 437] Q. And that is a meaningless figure? It is simply a sum of averages of each state shown on the exhibit?

A. It doesn't change the average. We have shown the tonnages. There is no question about those tonnages that

we show opposite 14, 15 and 16 in each of the states shown. And the tonnages bear out the percentages opposite line 17 and the whole purpose of the statement is to show tonnages, tonnage density of Florida is less than the other states indicated.

Q. Isn't that shown by comparison by revenue tons per mile of road on line 15 for each of the states?

A. That's right.

Q. And if you put the correct total under the total figure, that would give the correct figure on which to figure the relationship of Florida revenue per mile of road and for Florida and compare Florida with the total for all states?

A. We have got the correct total as far as tonnage is concerned there and that is merely a division of separate tonnage opposite 14, 15 and 16.

Q. They mean nothing, do they?

A. They do to us.

Q. What does it mean?

A. The percentages mean considerable.

Mr. Gwathmey: Mr. Commissioner, I submit counsel is [fol. 438] arguing with the witness.

Comm. Patterson: Well, the witness is arguing with counsel, also.

Mr. Gwathmey: The witness is explaining what he understood it to show clearly. Mr. Pettijohn is asking him something he doesn't want to show by the exhibit.

Comm. Patterson: I think we can let the exhibit stand for what it is worth.

By Mr. Petteway:

Q. Did you prepare this exhibit?

A. It was prepared under my supervision.

Q. What was the extent of your supervision?

A. The extent was the request for the preparation of it.

Mr. Petteway: Mr. Commissioner, I submit that is not supervision. That is requesting. I move it be omitted. He has demonstrated he can't explain it.

Mr. Gwathmey: It may not be clear to you——

Mr. Petteway: I move it be excluded from the record.

Mr. Wells: I join that motion.

Comm. Patterson: The motion is overruled. We will take the exhibit for what it is worth.

Mr. Petteway: That is all right, Mr. Commissioner.

Exam. Mattingly: Anything you want to say further, Mr. McCormack?

A. I believe not.

Comm. Patterson: You are excused.

[fol. 439] (Witness excused.)

H. W. Davis was sworn and testified as follows:

Direct examination.

By Mr. Gwathmey:

Q. Give your name and residence and connection with the L & N Railroad, please?

A. H. W. Davis, General Statistician, L & N Railroad, Louisville.

Q. Mr. Davis, the previous witness, Mr. McCormack offered an exhibit which was numbered 28 which was objected to upon the ground that the figures shown in the exhibit had been obtained from the accounting department of the L & N Railroad Company. Are you in a position to stand cross examination on these figures and answer the questions as to how the figures were obtained?

A. Yes, sir, I am.

Mr. Gwathmey: You may proceed, gentlemen, and cross examine.

Cross-examination.

By Mr. Hillyer:

Q. Mr. Davis, will you tell me how the operating ratio within the State of Florida was computed for 1945 and 1948?

A. Yes, sir, that was computed by dividing the operating revenues into the operating expenses.

Q. That is the mechanical method, but how did you [fol. 440] arrive at the revenues?

A. The revenues are, intrastate revenues are assigned strictly to the State of Florida. The interstate revenues are assigned on a mileage basis.

By Mr. Gwathmey:

Q. Assigned to Florida?

A. Assigned to Florida on a mileage basis.

By Mr. Hillyer:

Q. Is that separation made from certain records?

A. Yes, we audited waybills.

Q. On traffic going to Pensacola for water movement, you would classify that intrastate if it came from a point in Florida?

A. Yes, sir, I assume I would, yes, sir.

Q. How did you determine your operating expenses?

A. The operating expenses, the fixed facilities are charged directly to the State of Florida. The wages of train crews are based on the mileage of the run. The locomotive repairs and car repairs are distributed on basis of locomotive miles or car miles within the state compared to the total of the system.

Q. Were those expenses or transportation expenses all charged to the Florida traffic?

A. It is proportionate. In other words, if we have a run strictly within the State of Florida, that is entirely charged to Florida. But if we have a run that runs from [fol. 441] Alabama to Florida it is based on mileage percent.

Q. Those trains are both interstate and intrastate traffic?

A. Yes, sir.

Q. How do you make the separation?

A. On a mileage basis, miles of the run. That is the wages of the crew, that is what I am talking about.

Q. Is that based then on wages of crew entirely? Is that the underlying basis of apportionment?

A. Not altogether. That is just one item, wages of the crews. We have other expenses. We have fuel and water.

Q. Do you have many through trains as compared with locals or the opposite?

A. Within the state?

Q. Yes.

A. I can't tell you about that. I don't know the operations.

Q. In the number of cars in the bottom half of the exhibit, how were they assigned to Florida traffic, in the way you just stated?

A. Well, to be frank with you, this is the first I saw this. Pardon me. Let me take a look at that a minute. Yes, sir, that is strictly taken off the billing as we reported it to the Florida Commission in our annual report.

Q. And then they could move to a port such as Pensacola and it would be shown in here as Florida intrastate traffic?

A. Well, we don't make any differentiation whether it is intrastate or interstate. It is Florida traffic.

[fol. 442] Q. Does that figure include any cars which were originated in Florida and moved out to other states?

A. Yes, sir.

Q. Does it include any that came in from other states and were destined to points on that line for local delivery?

A. Yes, sir, it all the traffic handled in the state, regardless of where it came from.

Q. Does it include traffic originating in Florida and destined to a point in Florida on your line?

A. Yes, sir.

Q. Do you have any of that movement which goes interstate or over a state line?

A. I can't tell you that. It is all traffic, but I can't tell you what kind of traffic it is.

By Mr. Pettijohn:

Q. It encompasses every car to and from and in the state of Florida, in the State of Florida by L & N Railroad?

A. Yes, sir, it is taken from this record made to the Florida Commission.

By Mr. Hillyer:

Q. To, from and in?

A. Yes, sir.

Q. The heading is quite misleading then.

Mr. Hillyer: That's all.

By Mr. Pettijohn:

Q. Mr. Davis, does L & N Railroad continue to make any apportionment of operating revenue by making per-
[fol. 443] centage allowance for revenue for branch line?

A. When?

Q. Formerly, at one time, you give branch line regardless of miles handled over the branch. By temporary mileage of 50 or 100 miles according to branch line?

A. It is not my understanding to do it strictly on mileage.

Q. The operating expenses you assign for Florida, you have a regular formula and method on L & N by which you apportion all overlapping expenses?

A. Yes, sir, we have a formula that we use for each state. The same formula.

Q. It only applies to overlapping expenses? You assign everything within the state directly to the state with the exception of equipment and repairs?

A. Yes, sir, anything we can assign directly to the state, we assign it.

Q. And the operating expenses which you have prepared here have not been prepared for the purpose of this case at all? They are regular operating expenses and expenses that appear in the report to the Florida Commission?

A. Yes, sir, I checked through the figures and they agree with the report of 1948 figures reported to the Florida Commission.

Q. I haven't checked this figure yet, is this the total operation or the freight portion only?

[fol. 444] A. I think it is the total. I think it is the total.

Q. Look at page 600 for the revenues and you can get it.

A. That is the total freight and passenger.

Mr. Pettijohn: All right. Thank you, that is all.

By Mr. Overton:

Q. Mr. Davis, on the operating revenue shown within the State of Florida, that is your total operating revenues, I believe you explained. Now, that figure contains a,—a very small portion of that figure represents the traffic that is involved in this proceeding, is that correct?

A. Well, I do not know about that. This is our total operating revenues. I don't know how much is involved in this proceeding.

Mr. Overton: Mr. Davis is the witness to be familiar with the figures shown in Mr. Seigler's exhibit No. 1?

Mr. Gwathmey: He is.

Mr. Pettijohn: Look on page 600. You can find the intrastate revenues. It is also shown on schedule 16 on Exhibit No. 1.

Mr. Gwathmey: If you want to ask anything about Mr. Seigler's exhibit——

By Mr. Overton:

Q. I just asked for the proportion of the revenue involved in this proceeding.

A. I don't know.

Q. Wouldn't it be that intrastate traffic for 1948 and for [fol. 445] 1945 shown in schedule No.,—on schedule No. 26 of Mr. Seigler's exhibit No. 1?

Mr. Gwathmey: The witness doesn't have that exhibit before him. Would you mind showing it to him and let him see?

By Mr. Overton:

Q. The amount involved as shown in Exhibit No. 28 for operating revenues within Florida for 1948 to the total of $3,284,682 is the traffic represented by revenues of $668,128, is that correct?

A. That $668,128 is the intrastate portion of 101 freight. This figure $3,284,682 is all revenues, freight and passenger, including passenger revenues, mail, express and any other revenues.

Q. And the balance of that figure is the difference between $668,128 represents the balance on which you have already received the total increases?

A. It represents interstate portion of 101 and represents the mail and express and I don't know about the passenger part, if we have received all we asked for the passenger.

Q. You have received on passenger and you have received an increase on mail?

A. The Express Company received an increase on mail that affects us to a certain extent.

Q. Do you handle mail?

A. We receive 25 percent on mail.

[fol. 446] Q. And express rates have been increased?

A. Yes, sir.

Q. And interstate freight rates have been increased?

A. Yes.

Mr. Overton: That's all.

By Mr. Wells:

Q. Do you know what part of the 4,324,000 on your exhibit 28 would be comparable to the figure of 668,128 you showed for intrastate freight revenue?

A. No, sir, we are unable to separate our expenses between interstate and intrastate.

Q. You have no idea, then, what your operating ratio would be intrastate freight in Florida?

A. No, sir, that is something impossible to obtain.

Mr. Gwathmey: Mr. Wells referred to Mr. Davis' Exhibit 28 in order to keep the record straight. It is Mr. McCormack's exhibit No. 28.

Comm. Patterson: That has been rejected.

Mr. Gwathmey: I am going to ask in view of the fact Mr. Davis has been produced and cross examined on the exhibit, it be received. Just one more question for Mr. Davis, first.

Redirect examination.

By Mr. Gwathmey:

Q. Is the basis shown on exhibi- No. 28 for assigning operating revenues and operating expenses to the State of Florida the same basis the L & N regularly uses in mak-

[fol. 447] ing such assignments to the various states in which it operates?

A. Yes, sir, we use the same for-ula to assignments to all states and that is the one that we get the totals that we report to the State Commerce Commission.

Q. And the figures so arrived at on the basis you have described are those you file regularly with the Florida Railroad and Public Utilities Commission?

A. Yes, sir.

Mr. Gwathmey: That's all.

Mr. Commissioner, in view of the fact that we have produced an accounting witness for L & N and he has been cross examined as to this Exhibit No. 28, I ask that the exhibit be received.

Comm. Patterson: It will be received on that basis.

(Exhibit No. 28, Witness Davis received for the record.)

Comm. Patterson: You are excused.

(Witness excused.)

Mr. Gwathmey: Mr. Commissioner, may I at this point raise this question: We have been granted that the opposition cross examine certain of these witnesses for the carriers at some later time. I should be glad to know whether they are to be cross examined during this hearing or are they asking for an adjourned hearing?

[fol. 448] Mr. Hillyer: I think the ruling was that we should have a reasonable time. Of course, we can't read those 79 pages of text and 263 pages of exhibit while the hearing is going on. We will do it as soon as we can.

Mr. Gwathmey: I am asking you to say now what you want the Commission to do?

Mr. Hillyer: I'd like to do it at some future time when we have concluded with the witnesses we have here.

Mr. Gwathmey: On behalf of the carriers, I am very much opposed to any adjourned hearing in this proceeding. The case has been running on for a long time. The attorneys for the various shippers have had ample notice of this hearing. It was postponed once at Mr. Hillyer's request. As to the objection based upon the statement that the exhibit goes beyond the scope of the hearing, I submit they don't mean anything at all. The testimony here is somewhat voluminous because we have felt it necessary to take up the individual commodities and deal individually with them because we are asking increases on those commodities.

Now, I submit that these gentlemen,—In the first place I distributed it to them on June 17 all of our statistical data with perhaps one or two exceptions. This traffic data is data that would ordinarily, in the course of this hearing, be read into the record if we followed the usual practice.

But in order to avoid doing that and save time, I have been [fol. 449] glad to comply with the suggestion that we simply file it without being read. I submit that the cross examination of these witnesses should be completed at this hearing and I am opposed to any adjourned hearing and if there is an adjourned hearing, I expect to ask that it be held in Washington.

Mr. Hillyer: It was not my purpose to lay the foundation for a request for an adjournment. We are willing to get to it as soon as we can and the other witnesses are out of the way, as soon as we have any time tonight to study it. To ascertain if the material would be subject for rebuttal and we will have to decide what is to be cross examined and what we can rebut by our own witnesses. We don't know that.

Mr. Gwathmey: Just let me say this: It is not our fault if Mr. Hillyer has misconceived the scope of this hearing. They had the order of Section 13 and should have known if they didn't know, what is involved in the case and I submit it is no basis for request for further hearing or an adjourned hearing, to have them say they have come here unprepared to deal with various features of it.

Mr. Hillyer: I didn't say we came unprepared. We are fully prepared to meet all commodities named in the complaint and do it thoroughly.

This was dumped on us overnight. We did what we could [fol. 450] to get ready. We are willing to do it at the first time possible. I haven't mentioned further hearing. You are the only one.

Comm. Patterson: Let's proceed with the hearing. I will rule on that motion.

Mr. Gwathmey: I would like to have some understanding before I call the next witness because I have one more witness and his testimony will relate entirely to that sugar cane situation. I'd like to know if we can, whether we will wind this up.

Mr. Ribe: There is one shipper here. We don't have all the railroad testimony and we don't know how much we will have to digest and we haven't had any indication from the bench how much time we will have. Until we have those facts, the shippers aren't in a position to known what to ask for.

I think Mr. Gwathmey's concern is a little premature.

Comm. Patterson: Go ahead and put in your case, Mr. Gwathmey, and we will rule on this later.

E. C. Hicks, Jr., was sworn and testified as follows:

Direct examination.

By Mr. Gwathmey:

Q. Please state your name, residence and railroad connection?

A. My name is E. C. Hicks, Jr., and I reside at Wilming-[fol. 451] ton, North Carolina, the headquarters of the Atlantic Coast Line Railroad with which company I hold the position of Assistant Freight Traffic Manager.

Q. Have you prepared in narrative form a statement which you desire to submit in this case and have you prepared a series of exhibits which you wish to introduce in connection with that statement?

A. I have.

Q. Does all of this data relate to the rates on sugar cane moving to Clewiston, Florida?

A. Yes, I was asked to deal with that feature of this case only.

Q. And those rates, as I understand, are also involved in the I & S case which is set to be heard immediately following this hearing? Is that right?

A. Correct.

Q. You are are now introducing for the purposes of this 13 Section case the testimony with respect to the sugar cane movement on the idea that if it is considered as intrastate traffic, we want the Interstate Commission to include it in the 13 Section case and let its order run against that traffic? Is that right?

A. Correct.

Mr. Gwathmey: Mr. Commissioner—Pardon me.

By Mr. Gwathmey:

Q. Are the matters and things contained in this narrative [fol. 452] statement and in the exhibits to which you re-

ferred true and correct to the best of your knowledge and belief, Mr. Hicks?

A. They are.

Mr. Gwathmey: May we have the narrative statement given a number? Mr. Hicks, if you will run through these exhibits and identify them, I guess we can mark them.

Exam. Mattingly: Off the record.

(Off the record.)

Comm. Patterson: On the record.

By Mr. Gwathmey:

Q. Mr. Hicks, do you wish to make a brief statement supplementary to the statement which has been marked as Exhibit No. 29? If so, please proceed.

A. At the foot of page 58 of my exhibit No. 29, the statement is made that the extent to which the sugar producing capacity of Florida cane has exceeded that of Louisiana cane over the 11 season period ending with the 1947-'48 season has averaged 18.31 percent. That was arrived at by totalling the 11 percentages shown in the last column of my exhibit No. 48 and dividing by 11.

By Exam. Mattingly:

Q. Did you say this is on sheet 58 of 29? I see it.

Comm. Patterson: He didn't follow it exactly.

A. I just wanted to connect it up with that part so there would be a connection. I think it would be well to state [fol. 453] that I also obtained the average number of pounds of raw sugar produced in the same eleven seasons in Florida and in Louisiana, namely, 190.6 pounds in Florida and 161 pounds in Louisiana. The excess 190.6 pounds over 161 pounds is 18.38 percent.

The exact data upon which the 161 pounds was arrived at are not shown on the exhibit No. 48, but if anyone desires me to read the figures into the record, I can do so. I want to point out one more thing: It may be asked why the railroads desire the intrastate rates on sugar cane to be increased by the same percentage amounts as permitted by the Interstate Commerce Commission on interstate traffic,

since all of the raw sugar produced from the cane at Clewiston is shipped to the interstate destinations and the inbound net transit rates on cane are therefore interstate in character.

The answer is that this is desired for two reasons: First, although it is true that all of the sugar moves to an interstate point, sugar is not the only product of the cane. Black strap molasses is another product of the cane and application of net transit rates on the inbound cane is likewise contingent upon the molasses being shipped from Clewiston via the Atlantic Coast Line.

Now, all of the blackstrap molasses is not shipped to interstate destinations but a substantial tonnage moves by [fol. 454] intrastate routes to Florida destinations. In fact, during the year 1948 this movement amounted to 60 tank cars containing 5,268,140 pounds of blackstrap. In the 1948-'49 season the mill at Clewiston produced an average of 81 pounds of blackstrap molasses per ton of cane ground. Therefore, it required 65,051 tons of cane to produce the blackstrap that moves to intrastate destinations via intrastate route.

Obviously, the intrastate rates, net transit rate to Clewiston in Atlantic Coast Line tariff No. 91-50-N on file with the Florida Commission should be increased to the same as the interstate net transit rates in Atlantic Coast Line No. B-32-20 which we expect to justify in I&S 5646.

By Mr. Gwathmey:

Q. Am I correct in understanding that rates on sugar cane of which blackstrap molasses is made, and molasses moving to destinations in the State of Florida are the rates that were prescribed and fixed by the Florida Railway Commission and as to which no increases corresponding with increases under Ex Parte 162 or 166?

A. Not exactly. The rates that were prescribed by the Florida Commission a number of years ago would be applicable and they have not been subjected to interstate increases except for the fact the Atlantic Coast Line and Florida East Coast voluntarily established some years ago lower net transit rates which are being applied.

[fol. 455] Now, those net transit rates likewise have not been subjected to the increases.

Q. Isn't it a fact that the Florida Railroad and Public Utilities commission refused to authorize the application of the interstate increases in connection with those rates?

A. That is correct in connection with either the voluntarily established net transit rates or the Florida Commission prescribed rates which would be applicable in the absence thereof.

The second reason necessitating application of the Ex Parte 162 and 166 increases to rates on sugar cane in Florida is that the local rates as distinguished from the net transit rates should also be thus increased so that in the event the product of any of the inbound cane should not be shipped by Atlantic Coast Line Railroad or via Atlantic Coast Line-Florida East Coast from Clewiston, thus rendering net transit rates inapplicable on that cane and making Florida local rates applicable, such local rates will have to be increased by the same percentage amounts as the interstate rates.

Q. Is that all you have to say?

A. Yes, sir.

Mr. Gwathmey: Mr. Commissioner, we ask that the exhibits that have been referred to and identified by the witness be received.

[fol. 456] Comm. Patterson: There being no objection, they will be received in the record.

(Respondent's Exhibits No. 29-52, inc., Witness Hicks, received in evidence.)

Mr. Hillyer: We have not read the text and we have just got the exhibits. They were not furnished us in advance. I wish you would reserve your ruling until we have time to examine the text and exhibits.

Comm. Patterson: It is subject to ruling later after you have.

Mr. Hillyer: Will Mr. Hicks be available later for cross examination?

Mr. Gwathmey: You mean in this hearing? If it is not too much later.

Comm. Patterson: We will have him available for cross examination before we close the case.

The witness is excused.

(Witness excused.)

Comm. Patterson: Any further witnesses, Mr. Gwathmey?

Mr. Gwathmey: I believe that concludes the case on direct examination in the Section 13 case No. 30140 for the railroads.

Comm, Patterson: The railroads have their case in so far as they can put in in now, as I understand it, so the shippers are ready to proceed, if they have any witnesses they can put on. We might as well put them on.

[fol. 457] Mr. Hillyer: We have one emergency witness here we'd like to call so he can get away. Mr. Petteway and Mr. Wells have agreed.

Mr. Petteway: The Florida Commission will be ready to put on its witnesses immediately following this one.

M. L. Fleishel was sworn and testified as follows:

Direct examination.

By Mr. Hillyer:

Q. Please state your name, address and occupation?

A. M. L. Fleishel, Jacksonville, Florida.

Q. What is your business, Mr. Fleishel?

A. I am president of four different lumber companies. Manufacturing lumber and distributing it.

Q. What types of lumber do you manufacture?

A. Pine, cypress and hard wood.

Q. Are you in the wholesale or the retail end of lumber business?

A. Well, manufacturing and wholesale, but not retail.

Q. Have you any plants in Florida?

A. Yes, we have two.

Q. Where are they located?

A. At Shamrock and Port St. Joe.

Q. What do they produce?

[fol. 458] A. What do they produce?

Q. Yes.

A. Pine, cypress and hard wood.

Q. Where is the Shamrock mill located with respect to the Gulf of Mexico?

A. Well, it is about half way. It is on the Tampa branch of the Atlantic Coast Line, about half way between Perry and Gainesville. 150 miles from Tampa, 120 to Jacksonville.

Q. And how far from the Gulf of Mexico?

A. Well, about 18 miles.

Q. Do you have——

A. That is, I'm talking about Shamrock.

Q. Do you have any timber in that region?

A. Yes, 300,000 acres.

Q. What railroad serves your plant at Shamrock?

A. Atlantic Coast Line.

Q. Where is your other plant?

A. Port St. Joe on the Apalachicola Northern.

Q. Is that located on tide water?

A. Yes.

Q. How far from the Gulf of Mexico?

A. Right on it, 30 feet of water.

Q. What is the name of the rail shipping station at your Shamrock mill?

A. Cross City.

[fol. 459] Q. Are you familiar with the position of the railroad in this proceeding which would result in an increase in lumber and forest products in Florida?

A. Yes, I think I am.

Q. Do you have any interest in that proceeding?

A. Well, yes. Not as much as we used to have because we practically quit shipping over the railroad.

Q. Are you a member of the Florida Lumber & Mill Work Association, Mr. Fleishel?

A. Yes, sir.

Q. Are you one of the witnesses selected to testify in this case?

A. I guess so. I have been testifying in it for about ten years now.

Q. How many years have you been engaged in the lumber business in Florida?

A. Thirty-six years.

Q. Were you at one time President of the National Lumber Association?

A. Yes, four years.

Q. That is a nation-wide organization?

A. Yes.

Q. Have you been a director in the Southern Pine Association?

A. Yes, for 30 years.

Q. Have you been a director in the Southern Cypress [fol. 460] Association?

A. 33 years.

Q. Have you taken any part in Transportation Association of America?

A. I have been a Director about 15 years.

Q. How did you happen to become Director?

A. At the request of the President of two railroads, friends of ours.

Q. Do you have any railroad tracks of your own at your Shamrock mills?

A. We don't now. We have removed them.

Q. Did you have some at the time of this lumber case?

A. About 75 miles we had at the time this thing first started.

Q. What was that trackage used for?

A. Hauling logs to the mill.

Q. How do you haul your logs today?

A. Truck.

Q. Has your branch line or railroad line been torn up?

A. At Shamrock, yes.

Q. Do you have any lines running down to the Gulf?

A. Not there now, not now. We have highways, graded highways.

Q. Does any of your inbound log traffic move by rail?

A. Yes, wait, you say by rail?

Q. Yes.

[fol. 461] A. Not any more.

Q. Did it formerly?

A. Oh, yes, quite a movement at one time.

Q. Do you have any movement of logs into your Port St. Joe mill by railroad?

A. Not now. Until three years ago. Three years ago we had a rather heavy movement. But no longer. They are hauling lumber over there by truck by 75 miles, by inland waterway and our own road.

Q. What type of trucks do they move in?

A. Well, they are pretty heavy trucks. We carry about 43,000 pounds a pay load.

Q. Who owns the trucks?

A. We do.

Q. Who designed them?

A. Well, we had a part in it, but I would say the Dorsey Trailer Company and the automobile company had a hand in it.

Q. What area do you draw logs from for your St. Joe mill?

A. Well, we have a fleet of barges and tugs on the inland waterway and Apalachicola River and we have about 30 miles of railroad and we haul over the Florida main line highway.

Q. You said, "We have a railroad." Do you mean there is a common carrier railroad?

[fol. 462] A. No, our own railroad and we have a steel draw bridge across the river there.

Q. What percentage of your inbound logs at St. Joe will move by truck by water and by rail?

A. I'd say 25 percent by rail and probably 30 or 40 percent each by water and truck.

Mr. Gwathmey: Pardon me. Did I understand,—was that question related to inbound movement of logs?

A. Yes.

By Mr. Gwathmey:

Q. I thought you said you had been hauling all logs inbound?

A. At Shamrock, Cross City. Not at St. Joe. We haul three ways there. We are not operating very large plant in Shamrock.

By Comm. Patterson:

Q. Is that railroad a private railroad and not a common carrier?

A. That's right.

By Mr. Hillyer:

Q. When——

A. At one time there was more by rail than by water. There is a rather heavy log movement from Union and Columbia over the main line of the Coast Line under the intrastate log rate. That was done away with some seven or eight years ago.

Q. When did these mills at Shamrock and St. Joe go into operation?

A. Shamrock went into operation in 1947 about, and St. [fol. 463] Joe in '39,—'38.

Q. Where were your mills located prior to that time?

A. We were operating in Jacksonville then, hauling logs over the main line of the Coast Line.

Q. Why did you move your mills from Jacksonville to West Florida?

A. Well, on account of the tremendous increase in freight rates. We tore down a two-million-dollar plant and moved it to the woods.

By Comm. Patterson:

Q. Disn't cutting out the timber of the vicinity of where you had the mill, didn't that have something to do with it?

A. Absolutely nothing.

Q. Nothing at all?

A. No, sir.

By Mr. Hillyer:

Q. Who caused your increase on rates on logs?

A. Who caused them?

Q. Yes.

A. We always blamed the Atlantic Coast Line for it.

Q. Did they secure an order of the Interstate Commerce Commission?

A. How is that?

Q. Did they secure an order of the ICC increasing those rates?

[fol. 464] A. Yes, they did.

Q. What was the result of that increase?

A. We took it all the way to the Supreme Court of the

United States. You will recall the Coast Line built two draw bridges across the creek and—Cross Creek and Cedar Creek and abandoned those and forced us to move to the woods and Brooksville. We had two in Florida and two in East Port.

Q. Do you know what happened generally to the log traffic by rail in Florida as a result of that decision?

A. Well, of course, that movement was stopped entirely. But they later established a rate about one-third of that rate and were hauling logs about four hundred miles for about one-third of that.

Q. About how much per car?

A. They have been hauling for 28 dollars a car, but I imagine this 20 percent increase,—they hauled 28 dollars and four hundred miles.

By Mr. Gwathmey:

Q. Trainload rates?

A. Yes, but they were trainload rates then.

By Mr. Hillyer:

Q. Now as to your outbound movements, do — ship any lumber from out of your Shamrock mill to Jacksonville?

A. Yes.

Q. At the present time?

A. Yes.

Q. How does that move?

[fol. 465] A. Truck.

Q. Do you move any by rail?

A. Very little.

Q. What type of truck is used?

A. We don't use the same type of truck there we do at Port St. Joe. We put about $100,000 into specially designed trucks there for large, heavy loads. We are hauling most of that lumber now by trucks on account of the freight rates.

Q. Have you made any study of the cost of truck operation to you in handling that lumber?

A. Yes, we keep a very close record of it.

Q. Did you write off depreciation for those trucks?

A. Yes; everything else applicable to ownership and operation.

Q. How do you come out on the total result financially?

A. We are saving three or four thousand dollars a month over rail rates on that portion we are moving by truck.

Q. Where else do you ship by truck from Shamrock? Do you ship any into Georgia?

A. Not from Shamrock, but we are moving lumber by truck from Shamrock to Port St. Joe of unfabricated, but we have a movement from Port St. Joe of large transport trucks about equivalent of three carloads a week from Shamrock to Port St. Joe. We have a two-way haul on traffic. We have a heavy movement from Port St. Joe to Kissimmee [fol. 466] and Fort Lauderdale and as far south as Fort Myers and they pick up lumber on their return trip also.

Q. Did you have any trucks that operated in two directions with petrolium in one direction and lumber in the other, formerly?

A. You may recall in 1932 the Coast Line had a rate of 33 cents per hundred pounds from Cross City to Jacksonville, so we designed trucks with an oblong tank and a deck on top and took lumber to Jacksonville by truck and brought gasoline back. We had a large distributing operation out there and operated 12 or 15 branch stations. So we moved lumber in one direction and petroleum in the other, but the Coast Line cut their rate from 33 to 24 cents and finally to 14, but they never got that traffic back and haven't ever gotten it back yet. All of that moves in there by transport truck.

Q. Did those combination trucks prove successful?

A. They paid for themselves in about two years.

Q. You mean you wrote off the investment?

A. Yes.

Q. How do you handle your lumber now?

A. By pretty much by truck. You mean out of Shamrock?

Q. Yes.

A. By truck, pretty much.

Q. That is not combination?

[fol. 467] A. No, that movement is no longer.

Q. What are the largest consuming markets for your lumber in Florida?

A. The Florida East Coast, of course, and lower West Coast and intermediate points. All of these medium sized Florida towns consume a lot of lumber now.

Q. Do you ship to any larger South Florida areas?

A. Yes, sir, Gainesville, Kissimmee and Fort Lauderdale and several other points down there every week.

Q. What is the fartherest distance south you ship? Mileage?

A. 3 hundred or 3 hundred and 50 miles.

Q. Are there any mills located nearer South Florida than you are?

A. Yes, quite a few of them. Smaller type mills. They don't make the finished products we do in many cases. There is one down at Immokalee, Florida, and Foley, quite a few.

Q. That a smaller type mill in the central and southern part of Florida. Do they use rails or trucks?

A. Of course, I am not informed to what extent, but my guess would be about 75 to 100 percent by truck.

Q. Where is Immokalee?

A. That is on the Coast Line down near Everglades.

Q. That is in the southern most part of the state?

A. Yes.

Q. Is there any movement of lumber from Immokalee into [fol. 468] Miami?

A. Yes, there's always been.

Q. That is a truck movement?

A. Yes, that is a natural truck movement. We had a plant there in Ochopee just right near Immokalee and had a distributing yeard in Miami and moved all that lumber by truck. There was no other way to get there. It would involve a two-line haul when rates were even somewhere near reasonable.

Q. You mentioned Lacoochee?

A. It is the junction of the Seaboard and Coast Line.

Q. Do you compete with that in selling in southern Florida?

A. Yes, they have a big advantage on truck movement because they have so much shorter haul.

Q. Would an increase in intrastate rates on lumber from Shamrock and Port St. Joe into South Florida, would that cause you to increase your shipments by rail or to move any by rail?

A. To increase them?

Q. Yes.

A. No, it would have the opposite effect. We have no heavy movement of the lumber to South Florida because we export a great deal. We are sitting right there on tide water of 30 feet of water and we are loading steamers with-
[fol. 469] out any rail movement.

Q. Do you ship any lumber for export?

A. Yes, a great deal.

Q. Through what ports?

A. Well, we ship to Mobile; we ship to Jacksonville and occasionally to Tampa, but the bulk of it, I'd say goes from our own docks there in Port St. Joe. We have a heavy movement of lumber from South Georgia into Port St. Joe and out by water. There is some rail, but not much.

Q. Do you have moving of lumber out of St. Joe mill that moves by rail?

A. Yes, northern and eastern points, we do, yes. Several cars a day.

Q. In the past, have you had any movement by intercoastal or coastwise steamers through Florida ports?

A. Well, we did have at one time. There is practically no intercoastal service any more. There is very little movement of that type any more.

Q. Have you had any coastwise movement over the newly established service through Jacksonville?

A. I wouldn't say that we have.

Q. Are you troubled to any extent with mills in South Georgia shipping into Florida?

A. Troubled with them?

Q. With the competition?

[fol. 470] A. Yes, I may say they are pests.

Q. Will you explain that?

A. How is that?

Q. Will you explain how they are pests?

A. They are smaller type mill. There are no large mills of our type in South Georgia. They are smaller type mills, cutting different type of timber and producing a low grade very largely and we can't compete with them very much.

Q. What form of transportation do those mills use?

A. Trucks, pretty much, so far as I know. There is more or less rail movement, too, I guess, down in the extreme lower East Coast.

Q. Do you feel any competition of South Carolina mills in shipping into Florida?

A. Not into Florida, no.

Q. Has there been any change in the use of lumber in Florida in recent years?

A. In the use of it?

Q. Yes, do you process it in any way?

A. We are processing them on account of these extremely high freight rates. We have wholesale distributing. We cannot longer send raw lumber. It has to be dressed before we can consider shipping it.

Q. Do other larger mills go into the matter of processing [fol. 471] and dressing?

A. The larger type mills do, yes. Of course, there aren't many of them left now.

Q. You mentioned—Can you give an idea of the length of haul of lumber by truck today?

A. What?

Q. The length of haul of truck today? What is the longest haul for a movement by truck to your knowledge?

A. I have here a circular that came out of our Southern Pine Association Office, dated June 21 and I quote part of it: "In railroad circles, it is recognized that some tonnage will leave the rails because of high transportation costs, but the rails say this is offset by the greater revenues they receive through increased rates on that traffic which must be shipped via rail.

"One of our subscribers recently advertised that he is now prepared to deliver lumber 'any where within 1,000 miles of his mills in his own trucks.' Are there others in our industry who are doing or contemplating anything like this? How much lumber has been shipped or is being shipped from your plant via truck? The answers to these and other questions must be found. Will you fill in the attached questionnaire? It will give us the information necessary to get the true picture of what is happening in our industry transportationwise."

[fol. 472] I think that is an exaggerated thing, hauling lumber a thousand miles by truck. It is a common thing to haul it three or four hundred miles by truck. There is nothing unusual about that.

Q. Is there any other angle of this subject you would like to cover more in detail than you have?

A. No, I don't know. I am not tremendously interested in the outcome of this thing because we have just about, except in extreme cases, we are just about out of transporting lumber by railroad.

Q. Did you have any particular aversion to the railroads that caused you to do that?

A. No, I have been a good friend of the railroads all the time. I think their day is doomed. I don't,—I don't think organization is going to let the railroad make another dollar. I think I know what they are up against and I am sympathetic. I think they are pricing themselves right out of business. This is going to cost the railroad just like that famous lumber cost them millions of dollars. If they increase any more they won't get any of it, broadly speaking.

Mr. Hillyer: You may examine.

Cross-examination.

By Mr. Gwathmey:

Q. Did I understand you to say you were connected with four lumber companies?

A. Yes.

[fol. 473] What are those?

A. Putnam Lumber Company, Shamrock, St. Joe and Fleishel. We also have a mill in North Carolina.

Q. In the course of your testimony, you have referred frequently to the word, "we". I assume you are speaking of those companies when you have said "We have done so and so."

A. That's right.

Q. Is that right?

A. Yes.

Q. If I correctly understand your testimony, you are speaking for the companies that you are connected with. The great bulk of your lumber goes outside of the State of Florida, anyhow?

A. A good deal does, yes.

Q. You spoke of movements to the north and east. I assume you mean the North Atlantic Coast cities?

A. That is a high type of pine and cypress. That is highly processed.

Q. A great, or the greater portion of your output goes outside of the State of Florida now, as I understand it?

A. That is right. True.

Q. And so far as the movement in Florida is concerned, most of those move by truck, anyhow?

A. That's right.

Mr. Gwathmey: That's all.

[fol. 474] Comm. Patterson: Any further cross examination? You are excused.

(Witness excused.)

FRED PETTIJOHN was sworn and testified as follows:

Direct examination.

By Mr. Petteway:

Q. Will you state your name?

A. Fred Pettijohn.

Mr. Petteway: Mr. Commissioner, may we go off the record to mark these exhibits?

Comm. Patterson: Off the record.

(Off the record.)

Mr. Petteway: We offer in evidence Exhibits 53 to and including 71.

Comm. Patterson: There being no objection, the exhibits will be received for the record.

(Exhibits Nos. 53 to 71, inc., Witness Pettijohn, received in evidence.)

By Mr. Petteway:

Q. Mr. Pettijohn, is there any comment you would like to make with reference to any of these exhibits which are not included in your prepared statement?

A. No, I don't believe there is.

Mr. Petteway: Mr. Commissioner, May we go back off the record long enough to fill in the blanks on the prepared statement?

[fol. 475] Comm. Patterson: Off the record.

(Off the record.)

Comm. Patterson: On the record.

By Mr. Petteway:

Q. Mr. Pettijohn, on page 24 of your Exhibit 53, did you not want to add something to it?

A. I believe I wanted to add something to it. Yes, at the top of the page, I want that question to read: Would the evidence filed by the carriers in Docket 1574 permit the Florida and Public Utilities Commission to perform its duties under conditions laid by the Florida Supreme Court except by a denial of the application?

Q. With this addition, would there be any change in your answer?

A. No, sir.

Q. You heard the discussion yesterday, the testimony of Mr. Rush with reference to switching. Do you have any comment to make on switching?

A. Yes, Mr. Rush said all interstate received traffic was by one switching movement, whereas, in intrastate it received two switching movements in Florida. That statement is absolutely incorrect. He is moving a commodity in the State of Florida that has a switching movement and originates with the State of Florida. There are other commodities moving to and from the ports in the same catagory.

Q. If that is true, what effect would that have on Mr. [fol. 476] Rush's statistics?

A. It would destroy the number of cars he classified interstate and intrastate.

Q. Are you familiar with the increased in revenues in motor truck operations in Florida from the time of about the filing of Ex Parte 162 to and including the latest reports to the Florida Commission?

A. Well, I have some tabulations with respect to motor truck tons and revenues.

Q. Will you give us those figures, please?

Mr. Wells: May I inquire if you are asking about certificated carriers only?

Mr. Petteway: Yes, those are certificated carriers who report to the Florida Commission.

Mr. Commissioner, while he is looking for those, I indicated yesterday that we would like to submit for the record copies of the Florida Commission's order No. 1466, 1466-A and 1466-B, which have to do with the rates that are under consideration. I am embarrassed to find that I came off without copies of those. I would like to request permission to send those in for the benefit of the record.

Comm. Patterson: How much time do you need?

Mr. Petteway: Ten days.

Comm. Patterson: It will be submitted for the record within ten days.

[fol. 477] Mr. Petteway: I will send them in within ten days, thank you.

That would also include the most recent order 1466-D which extends the Florida rates pending the outcome of this 13 Section proceeding.

Comm. Patterson: We will recess until two o'clock and give him time to find these papers.

(At 12:15 p.m., a recess was taken until 2:00 o'clock p.m. of the same day.)

[fol. 478] Afternoon Session

Fred Pettiway resumed the stand and testified further as follows:

Direct examination (Continued):

Mr. Petteway: Just before the noon recess I had asked the witness to produce some statistics concerning increasing revenues in motor truck operations. We find we are unable to locate those. I would like to withdraw that question.

Comm. Patterson: Off the record.

(Off the record.)

Comm. Patterson: All right, you may proceed.

By Mr. Petteway:

Q. Mr. Pettijohn, did you participate in Docket No. 1677 before the Florida Railroad Commission which had to do with the application of the Atlantic Coast Line to withdraw passenger trains 39 and 40?

A. And substitute 191 and 192?

Q. And reroute 191 and 192?

A. I did.

Q. I hand you what purports to be an order of the Florida Railroad Commission in that docket.

Mr. Petteway: We offer this Order No. 1550, Docket No. 1677 for identification.

Mr. Overton: Will you repeat that?

Mr. Petteway: Order No. 1550, Docket No. 1677.

Exam. Mattingly: That will be 72.

[fol. 479] (Exhibit No. 72, Witness Pettijohn marked for identification.)

By Mr. Petteway:

Q. Mr. Pettijohn, will you state what amount the Coast Line, estimated that they would save by withdrawing trains 30 and 40 and rerouting passenger trains 191 and 192?

A. The order says approximately 370,000 dollars. My recollection was it was 465,000 dollar saving annually.

Q. Now, there was some testimony yesterday about the cost, the unit cost of fuel oil and Diesel oil. Can you give us the unit cost of fuel oil and Diesel oil for April, 1948?

A. According to the Interstate Commerce Commission decision the increased freight rates, 1947270, Ico 403,430, the cost per barrel of fuel oil, April, 1948, was $2.41. The cost per gallon of Diesel fuel was $10.15.

Comm. Patterson: Cost per what?

A. Gallon. Diesel fuel 10.15 cents.

By Mr. Petteway:

Q. Now, a few minutes ago you said that phosphate was one of the heaviest loading commodities moving in Florida. Do you have any figures on phosphate loadings?

A. I do.

Q. Will you please give us those?

A. According to the Atlantic Coast Line's annual report for the calendar year ending December 31, 1948, filed with the Florida Railroad Commission, they originated [fol. 480] 130,213 cars of phosphate rock in Florida, having a tonnage of 7,251,642 tons, or a little over 65 tons per car. Now, I have prepared a statement from the reports of the Florida East Coast Railroad, Seaboard Air Line Railway and the Atlantic Coast Line Railroad and in the year 1946 the phosphate rock tonnage originated on those three Florida railroads represented 37.35 percent of all tonnage originated by those roads in the State of Florida.

In 1947 the percentage rose to 45.51 and in 1948 the tonnage rose to 49 point 15 percent. Tons terminated in 1946 was 26.38 percent. In 1947, 33.39 percent. And in 1948, 39.27 percent.

Q. Is there anything else that you care to cover in your testimoney?

A. Yes, sir. There was an intimation on the record that the Florida Railroad Commission had never submitted to the carriers a formula for separating operating expenses to states. In 1926 the Florida Railroad Commission, together with the other Southern Commissioners, held a hearing in Atlanta, Georgia, at which time the Florida Railroad Commission submitted to the other Southern Commissioners and to the railroads a detailed formula for separating revenues and operating expenses to the states.

The southern Commissioners would not accept the separation and one of the principal reasons was that two of the [fol. 481] Southern States had a state law requiring that interstate revenue be prorated to their state on a mileage prorate which gave them a prorate on the Florida arbitrary. The operating expenses were provided for by primary accounts and they didn't have much opposition from the railroads except with two or three accounts which were engine house expenses and repairs and items of that kind.

And Mr. McKeg who was at that time Comptroller of the Atlantic Coast Line informed me personally that if we would make certain revisions to the formula, he would recommend that the Atlantic Coast Line Railroad adopt them.

The Commission—The Florida Commission didn't pursue the separation further.

Q. Is that all, Mr. Pettijohn?

A. I believe that is all.

Mr. Petteway: That is all, Mr. Commissioner.

Comm. Patterson: Cross-examination.

Mr. Hillyer: May I ask a few on direct, please?

Comm. Patterson: Proceed.

By Mr. Hillyer:

Q. Mr. Pettijohn, on your exhibit No. 63, I want to be sure whether I understand these figures or not.

A. Yes, sir.

Q. In line 1, column 3, you show the operating ratio for the Southern Region for freight service 64.68.

[fol. 482] A. That is correct.

Q. Does that mean that the freight service expenses were only 64.68 percent of the revenues?

A. Of the freight revenues, that is right.

Q. Of the freight?

A. Yes, you obtain that ratio by dividing expenses under Column 2 by the revenues under column one.

Comm. Patterson: Shouldn't that be column 4?

A. It should be, but there is two 3's, I notice, and the second three should be Column 4, yes, sir.

Mr. Hillyer: Miss Reporter, could you correct my column 3 and make it column 4 and correct the exhibit also?

Q. Now in line 3, do I understand correctly for the year 1944, the freight operating ratio of the three Florida lines was actually less than that of the Southern Region lines?

A. That is right.

Q. When I say less, that is better freight than for the Southern Region?

A. It means lower.

Q. Lower and better?

A. Well, to me an operating ratio doesn't mean a great deal if you don't take into consideration the value of the property used and the volume of business. Operating ratio by itself is rather a meaningless ratio.

Q. I will use the term better or worse so as not to be [fol. 483] confusing between less and more. Now, in line No. 11, in 1947, is that the right operating ratio for freight for Florida lines? It was a slight fraction of a percent better than for the system?

A. That is correct.

Q. And in 1948, that the freight operating ratio for Florida lines again was a little better than for the system?

A. About one and a half percent lower. That is correct.

Q. Now, on your exhibit 64——

By Exam. Mattingly:

Q. Just as an explanation, what does that "NA" mean in line 13? Not applicable?

A. Not available. With respect to that one.

Mr. Petteway: That is shown in exhibit 64, but it was left off of Exhibit 63, Mr. Examiner.

Exam. Mattingly: I see.

By Mr. Hillyer:

Q. On Exhibit 64, do I understand correctly a net railway operating income from freight for the Florida lines was roughly 14 million dollars in 1948?

A. That is correct.

Q. Whereas the total was only 20 million?

A. That is also correct.

Q. And that passenger traffic was a deficit of about 21 million dollars?

A. That is correct.

Q. Does that mean that the freight made up for all the [fol. 484] passenger deficit and 20 million besides?

A. That is the result of it.

Q. Now on exhibit 67, under rate of return for freight service for the Florida East Coast for 1948, does that figure 12.35 percent mean the rate of return which the Freight

net operating revenue yielded based upon the total investment of the carrier?

A. No, sir, upon the investment which I prorated to the freight service.

Q. I see.

A. On the total investment of the carrier, you'd divide 4,685,134 net operating income by the rate base 75,595,884 which would produce a little over 6 percent.

Q. Did you hear the testimony of the operating witnesses of the railroads?

A. I did.

Q. Did you hear the Coast Line's witness, I believe, explaining the method of determining the expenses for Florida traffic as distinguished from system traffic?

Mr. Gwathmey: Operating, did you say? Read the question.

By Mr. Hillyer:

Q. No, it wasn't the operating witness. Mr. Seigler. Did you hear the testimony of Mr. Seigler? Didn't he testify that they got the expenses on a revenue basis?

[fol. 485] A. You are referring to the apportionment of the expenses to the State of Florida?

Q. Yes.

A. Yes, sir.

Q. Does that method, in your opinion, bear any direct relation to the actual cost of service?

A. It most cerfainly does not.

Q. In your opinion, does it bear any fair index of the actual expenses?

A. No, sir, it does not and in that connection I might say that neither the Smyth vs. Aimes or the Minnesota rate case—The United States Supreme Court in commenting upon use of revenue for basis of assignment of expenses made the statement that any discrimination or disparity in the rates themselves was further perpetuated when you used the revenues derived from those rates as a basis for apportioning expenses.

Q. I think that it was the operating witnesses who testified as to the differences between the wages per crew for local trains and the wages per crew for through trains. Did you hear that testimony?

A. Yes, I recall the witness for the Seaboard Air Line making that statement, yes, sir.

Q. And you recall his reference particularly to the Jacksonville-Tallahassee Division of the Seaboard?

A. I do.

[fol. 486] Q. Are there any stations intermediate between Jacksonville and Lake City, not including those cities, with no local switch engines maintained there?

A. You say between Jacksonville and Tallahassee?

Q. Not including——

A. Baldwin. They have local switch engines at Baldwin.

Q. Do they have them at Live Oak?

A. They do not.

Q. Is that an interchange point with other railroads?

A. It is.

Q. When a through train comes with a car for interchange, who does the switching? Does the through train do any of the switching?

A. It may at times, but generally, the operation of the railroad is that the local train does it, does the switching and picking up and setting out of cars unless they are perishable cars at intermediate points between the terminals and if they don't do that, they are not railroading in my mind.

Q. If destined locally for local delivery at Live Oak, who would set that car out and perform it?

A. Unless it is perishable, it would be set out by the local. In other words, the local is nothing more than an intermediate switch crew that operates between the terminals generally.

Q. Does that save expense of having switching crews [fol. 487] at those points?

A. It does. I might give a typical example. 24 or 25 miles east of Tallahassee is Griffin. It is a little town and it is three or four miles from Griffin to Monticello. The Seaboard Air Line used to operate one train between those two points, but they now operate so that any train that comes through there and sets out a car is handled to and from Monticello by the local freight crew. The through freight crew never takes a car up there.

Q. Now, if a car was going interstate on a through train

from one of those stations, say Live Oak, who would place the empties?

A. The local freight train. They don't stop through freight trains to distribute empties.

Q. Are these items which I have mentioned reasons why the switching crew gets more than the line haul crew?

A. Yes, they do more work. The line haul crew under present day operations on most railroads has just got a free ride. The brakeman, all they do is head in and head out of a siding. They don't unload or load any freight or switch any cars to or from the car.

Q. While we have used this particular stretch of track to make this clear, what you say generally in the United States, at all small stations where they do not have local switch engines that the local trains use usually provide these types of switching?

[fol. 488] A. Yes, sir, in fact, if you get in the Northwest where they railroad a through train, you better not stop them at the station over about a minute and they better leave and arrive at the station within five minutes or the superintendent has the engine crew to his office to find out what delayed them. You might delay a passenger train, but you better — delay a freight train.

Q. You speak from actual experience?

A. I do.

By Comm. Patterson:

Q. Am I to understand that through car that brings to interchange doesn't place it on interchange?

A. As a general proposition, they don't bring it.

Q. But if they do?

A. If they stop with perishable car, they set the perishable out and switch it. I assume they do handle it sometimes.

Q. If they do, do they place it on the interchange track or not?

A. Yes, they would place it out on the interchange track, if it was set out by a through train.

By Mr. Hillyer:

Q. Do you know of any instance where in your experience with the Florida Commission there has been a request for differentiation from local to through train service?

[fol. 489] A. Not to my knowledge and I don't think the commission would even consider it.

Q. Have you heard all the carriers' evidence in this case?

A. Yes.

Q. So far?

A. Yes, I have.

Q. In your opinion is there any reliable cost data whatsoever presented by the Atlantic Coast Line? For example with respect to differences between Florida operations and system operations?

A. There is not.

Mr. Gwathmey: If the Commissioner please, I submit that the record speaks for itself and doesn't require an interpretation by the witness.

Mr. Hillyer: That concludes all I have.

Comm. Patterson: Any further direct examination? Cross-examination?

Cross-examination.

By Mr. Gwathmey:

Q. Mr. Pettijohn, what basis do you advocate for assigning operating expenses to the several states?

A. Well, you'd have to go up to an individual primary account expense basis because there is no common factor that you can use. Certain of your expenses, like your rails and your ties and so forth, can be allocated directly where [fol. 490] the rails are laid and where the ties are placed. Other expenses will be overlapping expenses, say for your Savannah,—If a man has jurisdiction, say, Savannah into Jacksonville some of those expenses might go on track mile basis some on car mile basis, some train mile basis.

Q. I am not asking what might be done, if you will pardon me. Have you any definite basis to suggest that the carriers might use for a substitute for the one they are using?

A. Yes, sir. The basis,—The Coast Line should have a copy in their file. But if they haven't, I will be glad to send them one when I get back to Tallahassee.

Q. Is that the one you spoke of that you thought Mr. McCaig thought was all right?

A. That is correct.

Q. Has the Florida Railroad Commission taken any exception to the annual reports which the railroads are regularly filing with it as to the basis of apportionment of operating expenses to the state?

A. No, the Commission itself has never taken any direct action with respect to that, but we expect to.

Q. Your testimony, as I understand it, is devoted to a considerable extent to supporting the proposition that from a rate standpoint Florida should be treated different from other portions of the South; is that right?

A. Well, I wouldn't explain it exactly like that, Mr. [fol. 491] Gwathmey. I would say that the majority of my exhibits were put in to show that the transportation and actual conditions in Florida were not similar to those of the South as a whole and the rate increase that was demanded on the Southern District is the rate increase which the carriers are now attempting to secure through the Interstate Commerce Commission as being applicable to Florida.

Q. Is it not your position that Florida should be differentiated from the rest of the South for rate-making purposes?

A. Yes, sir, and if you will allow me to say so, the position of the Southern carriers has been in all Division cases.

Q. Did the Interstate Commerce Commission differentiate Florida from the rest of the South in Ex Parte 162?

A. No, sir, it did not.

Q. Did it in Ex Parte 166?

A. No, sir, it did not.

Q. Is the Florida Railroad Commission a member of the National Association of State Commissioners?

A. It is.

Q. Did not a committee appointed by that association sit with the Interstate Commerce Commission throughout the hearings in both Ex Parte 162 and 166?

A. They did.

Q. Did you, as the representative of the Florida Commis-
[fol. 492] sion attend quite a number of hearings in Ex Parte 162 and 166?

A. I don't remember about 162. I think I attended three or four hearings of 166.

Q. Did you or the Florida Commission at any time during those hearings advocate before the Interstate Commerce Commission any different treatment of the interstate rates to and from Florida peninsula as contrasted with the rates in the rest of the South?

A. No, sir, we did not. We didn't advocate anything with respect to interstate rates, as I recall, and 166, I know I didn't. The only thing I contended for in 166 was that there should be no increase in protective service.

Q. But at no time during 162 or 166 did the Florida Railroad Commission urge or introduce evidence before the Interstate Commerce Commission supporting the proposition that Florida should be treated differently from the rest of the South?

A. That is correct. But you will recall at one time in Atlanta we did introduce evidence and you, on behalf of the southern railroads got up and objected to any state evidence being introduced in Ex Parte proceedings and the Interstate Commerce Commission did not mention the evidence being put in or make any mention of it because they fixed their increases by districts and we had no reason to
[fol. 493] even assume they'd do different in this proceeding.

Q. What hearing in Atlanta are you talking about?

A. I think it was 103.

Q. Ex Parte 103?

A. Or else 96.

Q. Your counsel, Mr. Petteway, moved at the commencement of the hearing that carriers' exhibits be excluded for reason they have failed to make an assignment of property values, revenues and expenses to Florida intrastate traffic. Did you hear that?

A. I did.

Q. When the carriers originally petitioned the Florida Commission for Ex Parte 162 increases, the Florida Commission at first denied all increases, did they not?

A. I don't recall, but I think that statement is correct.

Q. And did they not deny all increases for the stated reason that the carriers had not made an assignment of property values, revenues and expenses of Florida intrastate traffic and distinguished from interstate?

A. In 166 the- did definitely. I know that.

Q. 162?

A. I don't recall.

Q. Didn't they first deny increases at all?

A. As I say, I don't recall what they did in 162 because I don't recall ever sitting in 162. I say 166——

[fol. 494] Q. I am talking about the hearing before the Florida Railroad Commission at which you were present?

A. 162?

Q. Yes.

A. I don't recall a thing about what the Commission held. But I will say if they took my recommendation, they denied it because my recommendation was they deny it if they didn't furnish for the Commission information necessary, in my opinion, and the laws of Florida.

Q. They acted in accordance with your recommendation, did they not?

A. If they called on me for a recommendation, they did.

Q. Did the carriers thereafter file a petition with the Florida Commission for reconsideration? Do you recall that?

Mr. Petteway: Are you talking about 162 now? Or 166?

Mr. Gwathmey: I asked specifically about 162 increases.

Mr. Petteway: You are entirely wrong. Your reference is right with reference to 166.

Mr. Gwathmey: Very well. I will let it go at that. It may be my memory is not as good as yours.

The Witness: You are referring to 166. That is 162.

Mr. Gwathmey: I see.

The Witness: You asked for a rehearing.

By Mr. Gwathmey:

Q. We asked for rehearing and it was granted was it [fol. 495] not, by the Florida Commission?

A. Yes, I believe we granted you and had one rehearing.

Q. Yes, sir, do you also recall that in the events of that

rehearing a conference was held in St. Petersburg between the railroads and members of the Florida Commission?

A. You are talking about 1573 or 1574?

Q. I don't know which, according to your number. Ex Parte 166 increases, if you wish.

A. Yes, sir.

Q. Were you present?

A. I was.

Q. Was I present?

A. You were.

Q. Did not the railroad at that conference explain fully to the Commission,—I see a member of the Commission sitting opposite me here,—the reason why they could not make such a separation?

A. They explained that they couldn't, but I have never concurred, because it is done in Minnesota and North Carolina *Lignite and Norfolk* vs. *Conally et al.* went to the Supreme Court and the Supreme Court rendered a decision.

Q. Did the railroad at that conference invite the railroad or you yourself to suggest a satisfactory formula or method by which they could make a formula?

A. They did. And it was their baby, not mine. They were [fol. 496] making the application.

Q. Did you suggest any?

A. No, sir, I told them, "It is your baby and if you can't do anything else, why don't you take the Dr. Edwards formula and apply it?"

Q. Did the Florida Commission in that proceeding, notwithstanding the fact that the railroads had not made such an assignment, grant the increases in part?

A. They did.

Q. They only denied the increases as to certain excepted commodities in the last five per cent?

A. That's right.

Q. I want to ask you just one or two questions about these exhibits, Mr. Pettijohn. First, at the bottom of page 3 of your prepared statement, Exhibit No. 54——

A. No. 53.

Q. No. 53. You say, referring to the decision in the old Southern Class rate, Case 100, ICC 531, "The Interstate Commerce Commission stated that less traffic density per mile of road and less tonnage per train mile obtaining in

Peninsular Florida than in Southern territory warranted a higher rate on traffic from and to the State of Florida." Did you agree with that statement of the Interstate Commerce Commission as of the time when it was made?

A. I will agree with the statement that we had less traffic [fol. 497] density and less trainloading per mile, but I will not agree with their conclusions that that necessarily warranted a higher rate to and from Florida because, if you will recall in 25071, we took the carriers' exhibits which they filed in the refrigeration case 17936 and proved without a question of doubt that on the basis of the true movement from a representative point in Florida to Richmond, Virginia, the traffic to and from Florida was loaded in heavier trains and had a greater density for the through movement than any traffic they had.

Q. If traffic density in the State of Florida per mile of road, is less than in other portions of the Southern territory and there is less tonnage per train mile in Florida at the present time, do you agree that such conditions warrant a higher rate on traffic from and to the State of Florida?

A. If you are basing that on train miles and tonnage only, that is true, but, here they are not in my estimation the factors which should be considered in determining whether or not the rates should be higher or lower.

Q. I merely quoted your own language as appearing on page 3 of your statement.

A. And I am quoting, if you please, what the Interstate Commerce Commission held in Docket 13494. The only reasons that they advanced with that were that there was lighter train density per mile of road in Florida. It considered the point of origin and point of destination. It was an easy way, as you well know, to get rid of old basic [fol. 498] Jacksonville base point rates.

Q. Are you through?

A. Yes, sir.

Q. Will you look now at your exhibit No. 63?

A. Yes, sir.

Q. Now, you have there made a separation as between freight and passenger service. Am I correct in understanding that the separation of revenues and expenses was

made in accordance with the Interstate Commerce Commission's formula?

A. The separation between freight and passenger, I have every reason to believe was made according to the Interstate Commerce Commission formula.

Q. You have had a good deal to say about the freight service burden on account of passenger service. Suppose the railroads were to eliminate passenger service altogether, would their expenses be reduced about the amounts shown in column seven in that exhibit?

A. Well, theoretically they would not but that is running around the barn to get there. You know and I know, anybody who knows anything about it knows they wouldn't have these high class tracks for freight service and expensive passenger terminals and operate a great deal more economically if they didn't have passenger service at all.

Q. Even if the passenger service were wholly discontinued, would not a good portion of that expense assigned to passenger service still remain and still be borne by [fol. 499] freight?

A. No, the only one borne by freight would be track facilities practically. They could get rid of passenger terminals and could get rid of a lot of other stuff in connection with passenger service and get rid of outside passenger solicitors.

Q. But aren't there a good many things for use by both passenger and freight?

A. Yes.

Q. And wouldn't they have to bear that?

A. That is confined mainly to track structure and signals.

Q. 50 per cent of expenses shown in column 7 wouldn't remain?

A. No. You couldn't tell if it would be 40 or 60 or what.

Q. Do you have any idea what it would be?

A. No, but if you take an operation of strictly freight line like the ore lines up in north Minnesota and Wisconsin and compare them on here, you wouldn't find any such showing as that.

Q. Look at 66 there again. You have taken the Florida East Coast Railway, as I understand, for the year 1947?

A. That's right.

Q. And made a separation between freight and passenger operation?

A. That is right. I made a separation of the items entering into the rates, between freight and passenger. The net [fol. 500] railway operating income was reported by the company itself.

Q. There again if you discontinued the passenger service entirely, you'd still have assigned to freight service a good many of the expenses?

A. Yes, if you took all the passenger investment and simply took your freight revenues, your net railway operating income, you would have almost five per cent. About four and a half per cent.

Q. In the fourth line on the exhibit, you have shown working capital. Do you see that?

A. That's right.

Q. And for the Florida East Coast Railway you show a working capital of $2,275,016, which as I understand, you have obtained by using a ratio appearing in some case before the Commission, is that correct?

A. That is correct.

Q. Why did you not take the figures as shown in the accounts of the Florida East Coast Railway? Aren't they readily available?

A. Yes, but they don't mean anything when you come to amount of working capital the company is entitled to. And the Interstate Commerce Commission in all its valuation proceedings has discarded, ignored, the amount of cash and material and supply balances as of any date.

Q. Well, however that may be, the fact remains, as I understand you now, that you have not used the figures [fol. 501] available from the books of the company, but have used instead this formula?

A. That is correct and I might add that I never know of the Interstate Commerce Commission using the balances and in 162 and 168, it ignored the balances and computed the amount of working capital.

Q. One more question: Can you tell me whether the rates of the motor carriers in Florida have been increased recently, common carrier motor carrier?

A. To my knowledge they have not because the last motor carrier case in which I sat we denied them an increase.

Mr. Gwathmey: That's all.

Comm. Patterson: Any further cross examination of this witness?

Mr. Hillyer: I have some more questions.

Comm. Patterson: All right.

Redirect examination.

By Mr. Hillyer:

Q. Mr. Pettijohn, which causes the relatively greater maintenance, high speed trains or ordinary speed trains?

A. High speed trains. You never in your life heard of a railroad putting out a slow order on account of the weight of the train. It is always on account of speed of the train.

By Comm. Patterson:

Q. Isn't that largely due to the thrust on the track?

[fol. 502] A. That is more or less compensated for and I know we never figured that we had to put up a slow order on the weight of a train. We always had to put it on speed of a train. And carriers now are undertaking their big program of building with heavier rail, heavier roadbeds, more ties, primarily to get more speed in the passenger trains.

By Mr. Hillyer:

Q. Isn't it a fact there are many through trains from the North into Florida resorts which haul a relatively heavy passenger traffic?

A. Yes, during, on the East Coast during the season, they do and they also stop at practically every town they go through, so that speed on the East Coast or speed in Florida for through trains is an idle dream.

Q. In following Mr. Gwathmey's line of thought, you did not even suggest, did you, or would not suggest, that those fine through trains be eliminated?

A. My personal opinion is that any passenger train that doesn't pay its own way has not got any business being on the schedules.

Exam. Mattingly: Would you permit the elimination of passenger trains entirely if the carriers wanted to?

A. If it is not self-supporting, yes, sir. In the State of Florida, if you will go through the exhibits there, the passenger revenue now is less than it was back in 1928 and [fol. 503] their schedule is so designed that the intrastate passenger simply can't use it. He takes the bus or drives his own car, or if he is in a hurry, he flies.

Comm. Patterson: You are advocating the elimination of passenger service entirely?

A. If it doesn't pay, yes, sir.

By Mr. Gwathmey:

Q. How do you think you could get along with some of the big fruit shippers? Don't they demand service?

A. I have heard a lot of demands, but the only demands I have ever heard are demands for lower rates.

By M. Hillyer:

Q. Freight?

A. Passenger, too, not only railroad, but truck and buses.

Q. The shippers advocated increases in passenger fares so as not to further burden freight shippers?

A. They did in the last case before the Commission, the rate Conference did, but I didn't see any users of passenger trains advocating any increases.

By Mr. Petteway:

Q. Do you know of any applications for increases in passenger fares that have been turned down by the Florida Commission other than one that was turned down because there was no separation, at the same time 166 was turned down in recent years?

A. No, the last one I recall was our Docket No. 1575, if I recall correctly, and we turned that down because they [fol. 504] did not show a separation, and on a reconsideration, the balance of the South had given them the increase and Florida did.

Q. Granted it?

A. That's right.

Q. With reference to freight increases for express services, do you know of any application for increase for those rates that was denied by the Florida Commission?

A. I do not.

Q. There has been quite a few of those applications, have there not?

A. Yes, I think there have been three of them or four in the last couple of years.

Q. Do you know of any application for increase in Pullman fares that have been turned down by the Commission?

A. No, we granted, much to our surprise, the increases in Pullman fares.

Mr. Petteway: I believe that is all.

By Mr. Wells:

Q. With reference to Exhibit No. 63, I notice that in 1944 the consolidated figure for the three Railroads in Florida on revenues was 62 million, which reduced to 56 million at the same time expenses in column two increased from 39 million to 50 million. Then there was a reverse trend comparitively between those two in succeeding years. Do you know of any occasion for that, other than operation? [fol. 505] A. Yes, in 1945 at the close of the war, the railroads were allowed to amortize their war projects and my recollection was that the Coast Line had 23 million dollars of amortization in that one year. Subsequent to that time the expenses have remained high because of the fact that the carrier has been having a lot of depreciation that they have carried forth from the war and did not set up a reserve to take care of during the war.

Q. You mean deferred maintenance?

A: That is right.

Q. Did the three Florida roads embraced in 63 have any reserve for maintenance as provided by the rules?

A. As I recall, Seaboard had something like ten million dollars and when the reorganization took place it was wiped out through entry to acquisition adjustment, but none of the carriers in the South, to speak of, appeared to make any attempt to set up through the maintenance reserve for the deferred maintenance that was taking place during the war.

Mr. Wells: That is all.

Mr. Petteway: That is all.

Comm. Patterson: You are excused, Mr. Pettijohn.

(Witness excused.)

Mr. Petteway: Mr. Commissioner, that is the Commission's case with the exception of the submitting those orders for the record.

[fol. 506] I would like to offer exhibit No. 72 for evidence.

Comm. Patterson: There being no objections, it will be received for the record.

(Protestant's Exhibit No. 72, Witness Pettijohn, received in evidence.)

Comm. Patterson: I don't believe the others are in evidence.

Mr. Petteway: We offer Exhibits 53 to 71, inclusive, in evidence.

Comm. Patterson: There being no objections, they are received for the record.

(Protestant's Exhibit Nos. 53 to 71, inc., Witness Pettijohn, received in evidence.)

Mr. Harrison: Mr. Commissioner, I have two witnesses on agricultural lime stone who are anxious to get away. I'd appreciate it if I could put them on now and if it is agreeable now, I could finish my case in about 30 minutes more and I will be through.

Comm. Patterson: It being agreeable to all parties, you may produce your witness.

C. C. DeLoney was sworn and testified as follows:

Direct examination.

By Mr. Harrison:

Q. State your name and address for the record.

A. C. C. DeLoney.

[fol. 507] Q. Whom do you represent?

A. I am Sales Manager for Cummer Lime and Manufacturing Company of Ocala, Florida.

Q. You are familiar with the sale of ground agricultural limestone in the State of Florida?

A. I am.

Q. How long have you been in that work.

A. In detail, that is in charge of sale for two years, but in connection with production and general sales, for 15 years.

Q. What is the purpose of ground limestone?

A. It is used as a secondary plant food and as for relieving acidity of the soil.

Q. Do you do the fertilizer mixing to some extent yourself?

A. Yes.

Q. What is the general proportion applied to the soil, directly to the soil per acre?

A. In our company, our proportion would run better than 95 percent going directly to the soil.

Q. How much per acre tonnage?

A. From one to three tons per acre.

Q. Where is the plant located?

A. At Kendrick, Florida, five miles north of Ocala, in Marion County.

[fol. 508] Q. Have you any statements you'd like to make with respect to these increases?

A. I have a statement I would like to read in the record. My name is C. C. DeLoney, of Ocala, Florida. I am Sales Manager for Cummer Lime and Manufacturing Company and I am appearing for and in behalf of this company.

We very strongly urge that the decision of the Florida Railroad and Public Utilities Commission, exempting Agricultural Ground Limestone from the last increase on intrastate traffic, be upheld.

Cummer Lime and Manufacturing Company ships Hi-Calcium Lime to many Florida points, all of which is used exclusively for agricultural purposes. Our hi-calcium limestone contains better than 90 percent pure calcium carbonate.

We do not claim that our ground hi-calcium limestone is a complete fertilizer; however, the fact is recognized by everyone that this limestone is very essential in supplying calcium, a secondary plant food. In addition, it is most necessary in correcting soil acidity. Further, we furnish ground hi-calcium limestone to fertilizer plants to be used in making their fertilizers.

Our company has been producing and shipping this ground hi-calcium limestone for the past several years.

During the war years and for a while thereafter, our production of this material was steadily increased, all of which is used exclusively for agricultural purposes.

[fol. 509] At the present time some of our customers, from the following points are hauling limestone via their trucks: Palatka, St. Augustine, DeLand, Sanford, Daytona Beach, Webster, Starke, Gainesville, Macclenny, Lake Butler and other points nearer our plant at Kendrick, Florida.

Q. Right there, what is the maximum distance that the material is hauled?

A. St. Augustine would be the farthe*r*est which is approximately 90 miles, road mileage, from our plant.

Q. All right.

A. This, of course, is taking revenue from the railroads under their present rates on limestone for agricultural purposes.

In addition, we are losing business for ground hi-calcium limestone to small local plants who have no railroad facilities and who haul their production exclusively via trucks. This applies on a large tonnage that would move almost 100 percent via rail if we were able to secure the business. This business is lost to us, and the revenue therefrom is lost to the railroads, under the present existing rate. If the exemption on Agricultural ground limestone is withdrawn, it will mean the loss of much additional tonnage of hi-calcium limestone to our company to these local plant shipments and loss of freight revenue in shipment of same to the railroads. This is true of all sections of the state where [fol. 510] many local deposits of limestone are to be found.

Again, with the returns to our cattlemen, farmers and growers from their sales being on a steady decline, any increase in the cost of ground hi-calcium limestone to them will bring about either a reduction in the tonnage to be used or their finding a source of supply from small local deposits which will move exclusively via trucks. This will mean much loss of business to our company and corresponding loss of revenue to the railroads.

In view of the above, we again urge your honorable body to retain the present exemption of agricultural ground limestone from the last increase on intrastate traffic.

Q. Does the amount of limestone applied per acre vary from year to year.

A. Our experience is that if, say a cattleman applies this year, he will probably wait until the following—that is, a two-year period before making another application. In other words, a two-year span.

Q. In many instances it is constant sales effort to sell these cattlemen on lime?

A. It is.

Comm. Patterson: Any further direct examination? Cross-examination?

Cross-examination.

By Mr. Gwathmey:

Q. What percentage of your output is moving by rail at [fol. 511] the present time?

A. Right at the present time, our percentage has dropped, rail movement, until it is hardly pushing 70 percent.

Q. Is there anything unusual or abnormal about that?

A. There is more local tonnage being used. It is farther out. In other words, where the fellows can stand the haul, as against the present railroad rates.

Q. If I understand, about 70 percent of your output now is going by rail?

A. That is right, at the present time.

Mr. Gwathmey: That's all.

Mr. Harrison: That's all.

Comm. Patterson: You are excused.

(Witness excused.)

W. C. Parmeter was sworn and testified as follows:

Direct examination.

By Mr. Harrison:

Q. Please state your name and address for the record.

A. W. C. Parmeter, Ocala, Florida.

Q. Whom are you speaking for?

A. I am Secretary-Treasurer of Dixie Lime Products Company, also Secretary-Treasurer of Dolomite Products,

Incorporated, and I am appearing for and in behalf of both companies.

Q. What are your shipping points?

[fol. 512] A. We ship from Kendrick, Lebanon and Dolomite, Florida. Redick, also.

Q. Describe briefly the locations of those plants?

A. Redick is a local point on the Coast Line, about 15 miles north of Ocala. Kendrick is local on the same line about five miles north. Lebanon is in Levy County between Dunnellon and Otter Creek, I believe it is. Dolomite is a private siding just north of Sarasota, served by both Atlantic Coast Line and Seaboard.

Q. Have you had the same experience in placing your limestone to the farmers as Mr. DeLoney just stated?

A. Practically, yes, sir.

Q. You are meeting the same local competition?

A. To a large extent. Perhaps not as great as he is.

Q. Have you prepared a statement you'd like to make?

A. I have. We ask that the decision of the Florida Railroad and Public Utilities Commission, exempting agricultural ground limestone from the last increase on intrastate traffic be upheld.

Dixie Lime Products Company ships hi-calcium ground limestone and Dolomite Products, Incorporated ships dolomitic limestone. Both materials are used for agricultural purposes, the difference being only in chemical analysis. Dolomite contains both calcium and magnesium carbonate while the hi-calcium, as the name implies, contains only calcium carbonate.

[fol. 513] It is not claimed that either of the materials is a complete fertilizer, but are recognized by all authorities as vitally necessary in supplying the important secondary plant foods of calcium and magnesium, aside from correcting soil acidity. As further evidence that limestone is properly *calssified* as a fertilizer material, the fertilizer manufacturers were shipped 43 percent of total shipments in 1946, 35 percent in 1947 and 36 percent in 1948, to be used in mixing their complete fertilizers.

Using 1946 as a base period, our tonnage in 1947 decreased 26 percent and in 1948, 38 percent. The reason for the decrease in tonnage during the past three years is, of course, debatable and several reasons could be assigned,

not the least being that early in 1947, the intrastate freight rates on this material were increased. If freight rates are again increased, we are convinced that there will be a very decided decrease in the amount used, with a substantial reduction of both tonnage and revenue for the railroads, as well as ourselves. The percentages mentioned are from our own records and in no way represent total liming material used in the state, as there are a number of other producers in the state and a number shipping into the state.

Lime and limestone, in some form, from our calcareous limestone, Dolomite, Brooksville rock, conquinarock and oyster shell are found well distributed over the state. If [fol. 514] freight rates are raised to the point where it is uneconomical to move this material by rail, the growers will be forced to exploit local material, hauled entirely by truck, thus depriving the railroads of their present tonnage.

Using a six months period, December, 1948, through May, 1949, in comparison to corresponding periods in the two preceding years, shows for the period ending May 31, 1947, that 96 percent of total shipments moved by rail and four percent by truck; for 1948 the total is 89 and one-half percent by rail and ten and one-half percent by truck. The six months ending May 31, 1949, the total is 85 percent by rail and 15 percent by truck.

These figures show a large increase in percentage hauled by truck and indicate a very definite trend. This is all the more noteworthy, due to the fact that lime is used in volume, the average application being between one and two tons per acre, and is primarily a rail movement proposition.

Again we wish to stress the fact that the user of agricultural limestone has reached the point where any addition to his delivered cost will force him to seek lower costs by turning to trucks or be forced to sacrifice the gains he has made by reducing the amount he uses.

Q. Is it your view that the present freight rate associated with the maximum price you could get for your material has about reached the saturation point?

[fol. 515] A. It is.

Q. Have you any further remarks to make on that angle?

A. I don't believe so, Mr. Harrison.

Q. What is your average loading in closed equipment and [illegible] equipment?

A. For the year 1948, the average loading in carloads in bag material shipped in 100 pound bags was approximately 42 tons per car. The shipments in bulk averaged 52 tons per car.

Mr. Harrison: That is all.

Cross-examination.

By Mr. Gwathmey:

Q. I notice you say that if the rates are increased you're convinced there will be a decided increase in the amount of products used.

A. That is a typographical error. There would be a decided decrease.

Q. There may be a decided decrease?

A. Yes, sir.

Q. Would you say the same result would come about when you increase your prices? Would that be the same result?

A. We have not increased our prices since 1946.

Mr. Gwathemy: That's all.

Comm. Patterson: Any further cross examination? You are excused.

(Witness excused.)

Mr. Harrison: Thank you very much.

[fol. 516] Roland A. Smith, was sworn and testified as follows:

Direct examination.

By Mr. Wells:

Q. Will you please state your name, address and occupation?

A. Roland A. Smith, 827 Alfred I. duPont Building, Miami, Florida. I am Assistant to the Manager of the Greater Miami Traffic Association.

Q. What is that?

A. The Greater Miami Traffic Association is a voluntary, nonprofit Florida Corporation, and has for its purpose the handling of traffic and transportation matters for the Greater Miami area. Included in its membership are the city governments of Miami and Miami Beach, the Dade County Commission, and approximately 200 individual business concerns and industrial interests.

Q. State briefly your experience in transportation?

A. I was employed in the Freight Traffic Department of the Seaboard Air Line Railroad Company for approximately five years and with the Tampa Traffic Association approximately one year. I have been with the Greater Miami Traffic Association for two years, approximately. My duties include the handling of rate adjustments and the preparation of rate studies to be submitted in cases before the Interstate Commerce Commission and other regulatory bodies.

[fol. 517] Q. Have you prepared four exhibits to be presented in this case?

A. I have.

Mr. Gwathmey: May we go off the record for identification?

Comm. Patterson: Off the record.

(Off the record.)

Comm. Patterson: On the record.

By Mr. Wells:

Q. Were the four exhibits prepared by you?

A. They were.

Q. Will you briefly explain the exhibit 73, which has been identified?

A. The last major adjustment in the rates on fertilizer and fertilizer materials interstate in the southeast and intrastate in Florida was 1941. The rates since that time reflect no basic changes in rate level reflecting only the results of the various general increase cases.

During this period the rates on these commodities in intrastate traffic in Florida have differed as to level with the interstate rates on the same commodities for similar hauls and reflect different levels within various sections of the

state. Since sometime in 1941, for example, there have been five different scales of rates applicable during the same period on intrastate movements of fertilizer and fertilizer materials in Florida. These varying rate scales reflect [fol. 518] the Florida carriers' separate consideration of the fertilizer adjustment in Florida. During the same period interstate rates in the Southeast and from points in the south to Florida have been based on a single scale.

My first exhibit, identified as Exhibit 73 consists of a title sheet and four pages showing a comparison of the several rate scales for representative distances on Florida intrastate traffic and on interstate traffic in the South. Page one of Exhibit 73 shows the rates effective on June 30, 1946. Column two shows the scale of rates applicable on fertilizer materials. The rates shown therein reflect 75 percent of the Class M rates and apply for single line hauls where lower charges result by use of this scale than would result from the applicable scale shown in Columns 3, 4, 6 or 8. Joint line hauls under the scale in Column 2 are the sum of the local hauls less 10 percent when two lines are used and less 20 percent when three or more lines are used.

Q. Are you speaking of intrastate rates?

A. That is correct. Column three shows the scale applicable on fertilizer and fertilizer materials between points in North Florida, as more specifically described on page 4 of the exhibit, for single or joint line hauls. This scale is the same as the interstate scale and the scale in Column three up to 360 miles in the distance blocks shown on the exhibit. The actual break in the scale is at 390 miles.

[fol. 519] Columns five and six show the scale applicable on fertilizer and fertilizer materials between points on the lower East Coast of Florida, the Lake Okeechobee area and on joint line traffic in conjunction with the Florida East Coast Railway.

Column five shows the scale rates and Column six shows the rates actually applied on shipments moving the distances shown reflecting the 75 cents per ton allowance made to the consignee for unloading, handling and delivery to the fields at destination. The charges shown in Column six are less than the interstate scale through 25 miles, greater than

the interstate scale through 300 miles and less than the interstate scale for distances beyond 300 miles.

Columns seven and eight show the scale of rates applicable on fertilizer and fertilizer materials between points on the Florida East Coast Railway. Column seven contains the scale rates and Column eight shows the rate paid for transportation, reflecting the 75 cents per ton allowance made to the consignee for unloading and handling at destination. Column 9, as referred to previously, shows the interstate scale.

Q. Mr. Smith, just previously, column 8 rates on page one are the same as column 7, after crediting the 75 cent ton allowance for delivery at destination?

A. That's correct.

[fol. 520] Q. Likewise the Column 6 is the same as Column 5 after allowing the 75 cents for delivery in their destination territory?

A. That is correct.

Q. Let's take for example a shipment intrastate from Jacksonville, Florida, where there are fertilizer plants, to Palm Beach, a point located on the Seaboard Air Line and on the Florida East Coast, also. If it moved from Jacksonville to Palm Beach by the Florida East Coast, which rate would apply?

A. The scale,—the charge actually paid in Column 8.

Q. If the movement were by the Seaboard Air Line between the same points, would the scale 6 apply?

A. To West Palm Beach, no. The Seaboard has published a commodity rate to that point to meet Florida East Coast scale.

Q. So that—but to other destinations within the area D territory, the column six rate would apply if it were by the Seaboard or Coast Line, but the column 8 rate would apply if it were by the Florida East Coast to the same destination?

A. That is correct.

Q. Will you proceed with the explanation of page 2?

A. Page 2 of Exhibit 73 shows the rates on fertilizer and fertilizer materials presently applicable on Florida intra-[fol. 521] state traffic and on interstate traffic in the South. The scales shown reflect only the changes resulting from the general increases authorized by the Florida Commission on

Florida intrastate traffic and by the Interstate Commerce Commission on interstate traffic since June 30, 1946. The interstate rates, however, do not include the emergency increases authorized by the Interstate Commerce Commission in Ex Parte 168 as will be noted on the exhibit. It will be further noted that in Column 6 the rates for many distances are presently higher than the interstate rates for the same distances.

Q. Turn to sheet three, unless you have some further explanation on two.

A. Page three of Exhibit 73 shows the rates which would result from the application of the carriers' proposals in these proceedings on intrastate traffic and the present rates on interstate traffic in the Southeast. The scales shown on Florida intrastate traffic reflect increases of 20 percent and 25 percent over the rates shown on sheet one of Exhibit 73. It will be noted from Columns six and eight of the Exhibit that the rates proposed by the carriers will be considerably higher for many distances than the present interstate rates.

Q. Mr. Smith, I call attention to the fact that column seven and eight are on page three of your exhibit 73, refer [fol. 522] to the proposal prior to the amendment as contained in the motion at the beginning of this hearing by counsel for the respondents to eliminate the Florida East Coast single-line scale.

A. That's right.

Q. So that the proposed rate shown on Column 7 and 8, page 3, under those amendments, excluding those, should be the same as on page 2?

A. Under column 7 and 8 on page 2.

Q. Will you proceed with the next sheet of your exhibit 73, or do you have any further explanation of that?

A. That's all. Page 4 of Exhibit 73 shows the explanation of the column heads and reference marks used on pages 1 to 3, inclusive, of the exhibit, showing a brief description of the territorial applications of the rate scales for intrastate application.

Q. Will you next proceed with explanation of Exhibit 74?

A. Application of the carriers' proposals in these proceedings will actually result in greater increases in cents per ton on a portion of Florida's intrastate traffic than have been authorized and made effective on interstate commerce.

Exhibit No. 74, a one page exhibit, shows the rates on fertilizer and fertilizer materials with the amount of increase since June 30, 1946, under carriers' proposal on intrastate traffic and under present interstate scale for representative distances showing the amount the increase in Florida would [fol. 523] exceed the increase on interstate traffic. The exhibit uses for comparison the proposed Florida intrastate scale applicable between points on the lower East Coast, stations in the vicinity of Lake Okeechobee and stations on the Florida East Coast Railway on joint haul traffic; also to this territory from Central Florida, as more specifically described on that exhibit, with the scale of rates presently applicable on interstate traffic in the Southeast.

Column eight shows the amount in cents per ton by which the proposed increase in Florida would exceed the increase in interstate traffic. Column eight shows that the increase in Florida would exceed the increase on interstate traffic by amounts ranging from 17 cents to 60 cents per ton and averaging, for the distance blocks shown on the exhibit, 42.7 cents per ton. The amount of 60 cents per ton would reflect excess charges on carload shipments of from $12 per car of 40,000 pounds, to $30 per car of 100,000 pounds.

Q. In other words, the Florida D scale to which you refer on Exhibit 74 applies to destinations on the Florida East Coast Railway when a joint haul?

A. That is correct.

Q. And it also applies single line on the Atlantic Coast Line or Seaboard when it is to destinations within the prescribed destination territory in Florida?

A. That's right.

[fol. 524] Q. So that in one instance you'd have no increase under the present proposal if the shipment were a single line Florida East Coast. Whereas, you'd have increased rates indicated here if it happened to move over two lines instead of just one?

A. That's right.

Q. Do you have any data as to the consumption of fertilizer in Florida?

A. Yes, sir.

Q. Will you proceed with your Exhibit 75?

A. The State of Florida, in its production of agricultural products, particularly citrus fruits, fruits and vege-

tables, uses a tremendous quantity of fertilizer. Of course, fertilizer has no value other than the increased production occasioned by its use. Therefore, the volume of consumption of fertilizer in a state is important to the rail carriers, not from the standpoint of the potential rail traffic on the fertilizer and fertilizer materials alone, but also for the increased potential rail traffic on the increased volume of agricultural products resulting from the increased use of fertilizer by the producer. This is particularly important in Florida where the principal agricultural products of the state are fruits, vegetables and citrus fruits which move in long-haul traffic at comparatively high rates for the rail carriers.

[fol. 525] Exhibit No. 75, a one page exhibit, contains a statement showing fertilizer consumption in the State of Florida compared with the consumption in other states in the Southeast, for the years 1934, 1940, 1944 and 1946 as shown in the column heads on the exhibit. This exhibit shows for the State of Florida an increasing consumption of fertilizer, the amount used in 1946 being more than double the amount used in 1934. Florida, as compared to the other Southern States shown, in actual volume consumed more fertilizer than any of the states shown except Georgia and North Carolina.

The total consumption of fertilizer within a given state is important in reflecting the total volume of potential rail traffic. The extent to which fertilizer is used in Florida, as compared to the other Southern States, is more clearly shown, however by a comparison of the pounds of fertilizer consumed per acre of cropland.

Q. Does that next exhibit deal with that?

A. That's right. Exhibit 76, a one page exhibit, is a statement showing the amount of fertilizer used per acre of cropland, in Florida, compared with the amount used per acre of cropland in other states in the Southeast for the year 1944.

The exhibit shows the acres of cropland in each state, the tons of fertilizer consumed, the pounds of fertilizer used per acre of cropland, and in Column five the relationship [fol. 526] of use per acre of cropland in Florida versus the other states shown. Column five reflects the relative use per acre by considering the Florida consumption as index

100 and relating the other states to that index number. This exhibit shows that the consumption of fertilizer per acre in other Southern States ranges from a low of 12.7 percent of the Florida consumption for the State of Kentucky to 50.1 percent for the State of North Carolina. That relation indicates that the consumption in Florida per acre of cropland is almost twice as much per acre as the consumption in North Carolina, whose use materially exceeds the use in all other Southern States.

Q. If the intrastate rates on fertilizer and fertilizer materials in Florida were increased as proposed by the rail carriers, in your judgment, would that increase in rates result in any increased revenue to the railroads?

Mr. Gwathmey: I object to the question on the grounds this gentleman is not a shipper of fertilizer and not qualified to testify.

Mr. Wells: I submit he is qualified to testify as a traffic man who has made a study of these matters and the weight of his testimony is something to be considered.

Comm. Patterson: Overrule the objection. It is his opinion, after all.

A. It is not my opinion that there would be increased revenue.

[fol. 527] Mr. Wells: I offer in evidence Exhibits 73 to 76, inclusive.

Comm. Patterson: There being no objection, they will be received for the record.

(Protestant's Exhibits Nos. 73 to 76, inc., Witness Smith, received in evidence.)

By Mr. Wells:

Q. Do you have anything to add?
A. No, sir.

Comm. Patterson: Cross Examination?

Cross examination.

By Mr. Gwathmey

Q. Have the fertilizer rates in Georgia been increased by the amount of the interstate increases?

A. It is my understanding they have.

Q. Have the fertilizer rates in North Carolina also been increased by the amounts of the interstate increases?

A. I can't speak for the North Carolina rates. I have a record of that, but I don't have it with me.

Mr. Gwathmey: That's all.

Comm. Patterson: You are excused.

(Witness excused.)

Comm. Patterson: We will take a short recess at this time.

(Recess had.)

Thomas E. Haile was sworn and testified as follows:

[fol. 528] Direct examination.

By Mr. Wells:

Q. State your name, residence and business?

A. My name is Thomas E. Haile. I am Assistant to the Secretary Manager of the Growers and Shippers League of Florida. My address is 45 West Central Avenue, Orlando, Florida.

Q. State briefly your traffic experience?

A. For the past ten years I have been continuously engaged in traffic work, for two years with the Traffic Department of a Motor Common Carrier, then with the Transportation Corps of the Army and since 1946 with the Growers and Shippers League of Florida.

Q. What is the Growers and Shippers League? What relation does it have to the Florida citrus growers?

A. The Growers and Shippers League of Florida is a voluntary incorporated non-profit organization of growers and shippers of citrus fruit and fresh vegetables in and

from Florida, and is the duly appointed transportation agency of the Florida Citrus Commission.

The Florida Citrus Commission is the lawfully constituted body established by the legislature of the State of Florida, and is charged with the statutory duty of protecting the interests of the Florida Citrus Industry in obtaining and enjoying just reasonable, and otherwise lawful transportation rates, charges, rules, regulations and practices. The membership of the League also represents a large part [fol. 529] of the shipments of fresh vegetables which move from Florida.

Q. Have you prepared an exhibit to present in this proceeding?

A. I have.

Mr. Wells: Off the record.

Comm. Patterson: Off the record.

(Off the record.)

Comm. Patterson: On the record.

By Mr. Wells:

Q. Proceed with the explanation of page one of Exhibit 77.

A. Page 1 of this exhibit shows the acreage of citrus fruit, vegetables, and miscellaneous fruit in Florida for the 1937-38 through the 1947-48 seasons.

It will be noted that the acreage of citrus fruit has shown a consistent increase each year, from 322,500 acres in 1937-38 to 397,300 acres in the 1947-48 season. While the acreage of vegetables and miscellaneous fruits has varied from year to year, there has been a general increase for the period shown, with a resulting increase in the total acreage of all commodities from 536,800 acres in the 1937-38 season to 639,255 acres in the 1947-48 season.

Q. Does the next sheet of your exhibit relate to production and shipment of fresh citrus of Florida?

A. It does.

Q. That apparently is self-explanatory. And will you go [fol. 530] next to sheet three? Is sheet three similar to sheet 2 except it deals with other fruits and fresh vegetables? That is similar to sheet two?

A. It is.

Q. Do you have any data relative to consumption of fertilizer in Florida?

A. Yes, I have.

Q. Are those figures shown on page 4 of the exhibit?

A. They are.

Q. Do you have any additional explanation in regard to sheet 4?

A. No.

Q. Did you cause a survey to be made of the various fertilizer plants to determine the means of transportation used by the plants for incoming materials?

A. Yes, I did.

Q. What was the result of that survey?

A. The results showed that the large part of material comes into the plant by rail.

Q. What of the mixed fertilizer moving out of the Florida plant to Florida consuming points?

A. The survey showed a large part of that movement of mixed fertilizer was by truck from the plants to the groves or field.

Q. And were there some movements from the Florida [fol.531] plants to the groves by rail?

A. There was some by rail, yes.

Q. That was primarily and almost exclusively a source of citrus and fresh vegetables intrastate movements?

A. Yes.

Q. The last sheet of your exhibit is self explanatory as to mileage scale?

A. Yes.

Q. Mr. Haile, if the intrastate rates on fertilizer and fertilizer materials were increased as proposed in this proceeding, in your opinion, would that or would it not result in any increased revenue to the rail line?

A. In my opinion I believe it would result in decrease in revenue because of diversion.

Q. That is based on your experience in citrus and fresh vegetable growing and your survey and knowledge of the situation?

A. And contact with growers and vegetable people in Florida and fertilizer manufacturers.

Mr. Wells: I offer Exhibit 77 in evidence.

Comm. Patterson: There being no objection, it will be received for the record.

(Protestant's Exhibit No. 77, Witness Haile, received in evidence.)

Mr. Wells: That is all on direct.

Comm. Patterson: Corss?

[fol. 532] Cross-examination.

By Mr. Gwathmey:

Q. Mr. Haile, how long have you been connected with the Growers and Shippers League?

A. About two and a half years, sir.

Mr. Gwathmey: Thank you.

Comm. Patterson: You are excused.

(Witness excused.)

Frank E. Harrison, Jr., was sworn and testified as follows:

Direct Statement.

Mr. Harrison: My name is Frank E. Harrison, Jr., Tallahassee, Florida. I am appearing in behalf of the Dixie Lime Products Company, Dolomite Products, Inc., of Ocala, and State Road Department of Florida. I am a registered practitioner before the Interstate Commerce Commission and State Commission and I have been representing the public over a period of 25 or more years. I was connected with Southern railroads for 12 years in various capacities.

I would like to discuss briefly the rates on ground agricultural limestone first. And I will give a little back history of those rates. Mr. Parmeter and Mr. DeLoney described the operations of local producers of ground limestone in Florida.

The rates on these commodities in the South on interstate traffic, as well as to points in Florida, has been in a

[fol. 533] state of flux for a number of years. Only recently have these interstate rates been partially stabilized.

One of the early cases was Docket 22771, reported in 172, Icc 783, which is known as the Falling Springs, Virginia case. The scale was published in 1933 Speidners, ICC 1676 and shortly thereafter the Southern lines applied the single line scale prescribed in that case for both single and joint line application when loaded in box cars.

This case involved rates from those Virginia points to destinations in Southern Territory except the Florida Peninsular. On ground limestone and open-top equipment some of the Southern Carriers applied road aggregate scale prescribed by Commission Docket 17517, reported 122 ICC 166, when in open-top equipment. These rates were published in a tariff effective December 31, 1932, these later rates.

About 1939 or '40, subsequent to the increased rate under Ex Parte 123, the so-called T-295 scale was substituted for the Docket 1751 scale for application on road aggregates in Southern Territory and that scale was made applicable on ground limestone in both open-top and closed equipment.

So much for the adjustment between points in Southern Territory. The rates on intrastate shipments in Florida, prior to September 13, 1939, as I recall it, were old Florida class P rates per car of 30,000 pounds, excess in proportion. On that date, the Docket 1751 scale prescribed by the Com- [fol. 534] mission on road aggregates increased 10 percent under Ex Parte 123 was made applicable on ground limestone on either open or closed equipment for application in Florida.

These scales were first published in supplement 1-A to Agent Millers tariff 427-3, ICC 464. There was a small arbitrary over single line for hauls over two or more railroads over two hundred miles. 160 miles—At that distance both scales are the same. These same scales are in effect today, subjected to the full increase under Ex Parte 162. But no increase has been imposed under Ex Parte 166.

The rates on dolomite, which is the same thing as ground limestone, were transferred from the prior tariffs to the fertilizer tarrif- in supplement 40 to 5 to Agent *Hoke's* tariff, ICC 975, effective December 31, 1946.

I have prepared some exhibits which I now wish to identify which will visualize that adjustment.

The first exhibit is a statement of basic scales.

Comm. Patterson: No. 78.

(Protestant's Exhibit No. 78, Witness Harrison, marked for identification.)

Mr. Harrison: That exhibit consists of two pages. I wish you would strike in the fourth paragraph all the words beyond Jacksonville, Florida, on that exhibit.

The next exhibit is No. 79.

(Protestant's Exhibit No. 79, Witness Harrison, marked for identification.)

[fol. 535] Mr. Harrison: Exhibit 79 compares the Southern scale with the Florida intrastate scales. It consists of one page. The next exhibit——

Comm. Patterson: Off the record.

(Off the record.)

Comm. Patterson: On the record.

Mr. Harrison: My Exhibit 78 is self-explanatory. I wish to point out however, that the Southern producers can ship throughout the South, including all points in Florida, and north of a line from Jacksonville to Pensacola under scale—could ship under scale shown in column 1-r, subject to authorized increases. That is the interstate Southern scale.

The producers in Florida on or north of the line described above the Jacksonville River Junction line would apply column 1-1. There is no production in North Florida, therefore that means little. These producers are located in Southern Florida and apply the rates under Column 5-L. That indicates that the base rates, as of June 30, 1946, in Florida were approximately 10 percent higher than the rates within the South and the short haul rates from 10 to 50 miles,—10 up to 60 miles were never treated under T-295 scale.

Exhibit 79 compares the Southern Scale increased under Ex Parte 162 and 166 with the present Florida intrastate scales and I direct your attention to the rates under South

[fol. 536] Florida. You will observe that under the present rates in South Florida on open equipment our rates are higher at 200 miles than the Southern scale,—200 miles and beyond. In closed equipment, our rates become higher at two hundred and thirty.

Now, if we should be required to increase the Florida scales, the full 25 percent under Ex parte 166, the rates in Florida for all distances would be substantially higher than the rates in Southern Territory, generally. Those rates on Exhibit 79 apply on closed equipment,—I mean I am discussing closed equipment.

Exhibit 80 shows the base rates of the rates increased in Ex Parte 162 and what they would be under Ex Parte 166 interstate. Here we are contrasting the South Florida scale with the Southern scale and with still another scale that applies from Southern producing points to destination of the Florida Peninsular. To this scale to points in the Florida peninsular in Column 6 must be added Column 3 and 6, and 9 must be added, the arbitraries shown on page 2 of this exhibit for the distances south of the line of the Seaboard from Chattahoochee to Jacksonville.

There again the rates in South Florida are not too much lower than the scale into the Florida Peninsular up to 175 miles. Beyond that distance, the rates in Florida are higher than the scale applied to points in the peninsular [fol. 537] from interstate shipping points to points of destination in the Florida peninsular without adding the Florida arbitrary.

Exhibit 81 shows the earnings on ground limestone using 42 tons average loading in closed equipment from Lebanon, Florida, Whitestone, Georgia, and Nasgot, Tennessee. The latter two are representative interstate shipping points.

You will observe that the earnings on the Florida traffic is substantially higher and in some instances twice as much as the per car earning on the interstate traffic.

Exhibit 82 shows the car mile and ton mile earning on ground limestone on the Florida intrastate rate today without increases, using 42 tons as an average load in closed and 52 tons in open-top equipment for selected distances. Here again for distance of 100 miles, we have earnings of 65 cents a car mile and 12 and a half mills; at 200 miles the earnings are 43.3 cents per car mile.

I think the last exhibit shows the rates in Florida are by no means less than reasonable rates.

That completes my testimony on ground limestone.

I would like to say a few words on asphalt with particular reference to truck competition. Prior to Ex Parte 162 and particularly 166, seventy-five percent of the movement of asphalt used in the construction and maintenance of roads in Florida was handled by rail. We estimate our average consumption is around 20 million gallons per annum. [fol. 538] After 162 and particularly after 166, the suppliers of asphalt enlarged their storage facilities at Pensasola, Panama City, Jacksonville, Tampa, and opened up new facilities at Port Everglades. And tank transportation came into vogue in a very large way, to the extent that now 75 percent of our tonnage is drawn from these port facilities and I don't think 25 percent of it is moving by rail.

If we accept Mr. Hinnant's figures as an average, he shows only one percent, but I am confident it must be more than that moving by rail. The contractors have purchased tank transports to haul their own asphalt in.

I'd like to offer my exhibit No. 83 showing a list of transport tank trucks owned and operated by contractors for their own account in connection with the construction of roads in Florida. Transport tank trucks are economical when they are of 4,000 gallons or more when handling asphalt from the ports and it goes direct to the job without any rehandling. Tanks with less capacity generally are used for distribution from local storage to the highway.

By Mr. Pettijohn:

Q. Aren't the asphalt tanks also heated enroute from the asphalt storage to the place of use? From the asphalt storage places at the port, direct to the highways? Haven't they got a heater on the asphalt tanks so that it will flow? [fol. 539] A. The truck operators carry their own heater tanks and they can heat it right there on the highway.

I think there is one source of revenue available to the railroads and will give them far greater returns in my opinion and which I—it is my view, which has not be- exploited to the fullest. I refer particularly to the passenger

deficit. The shipping public should not be called upon to pay the deficit in high rates, because of the failure of the railroads to take the opportunity to reduce it. Taking off unprofitable branch line trains is not the only answer. Some re-arrangement of schedules could increase passenger train service substantially without increasing the number of trains,—rearranging schedules to met the needs of the traveling public, converting some of these semi-local trains with decent equipment, possible connection at the terminals with competing railroads and lower dining car costs. Any losses in the latter should be charged to advertising appropriation.

When we realize that one-third of that net operating income derived from freight traffic during 1948 was necessary to offset the passenger deficit,—and Mr. Seigler in his schedule 32, Exhibit 1, shows that the passenger deficit took up one-half of the net operating income derived from freight services in 1948, Atlantic Coast Line and Seaboard Air Line combined,—it seems to me it calls for drastic [fol. 540] action.

That completes my direct testimony.

Comm. Patterson: If these is no cross examination, you are excused.

Mr. Gwathmey: I would like to ask one question.

Cross-examination.

By Mr. Gwathmey:

Q. Is asphalt one of the accepted commodities mentioned in the Florida Commission's order?

A. No, sir, it was not. It was to the extent of 20 percent, instead of 25 percent. Its class rates were increased 20 percent. Therefore asphalt was increased 20 percent, instead of the 25 percent authorized in Ex Parte 166.

Mr. Gwathmey: That's all.

Mr. Harrison: Any increase in asphalt won't increase revenues.

Comm. Patterson: You are excused.

(Witness excused.)

Mr. Harrison: I would like to offer my exhibits Nos. 78 to 83, inclusive in evidence.

Comm. Patterson: There being no objection, they are received for the record.

(Exhibits 78 to 83, inc., Witness Harrison, received in evidence.)

G. R. Gordon was sworn and testified as follows:

[fol. 541] Direct examination.

By Mr. Hillyer:

Q. Will you state your name, address and occupation?

A. My name is Gail R. Gordon, General Traffic Manager, Container Corp. of America, 38 South Dearborn Street, Chicago, Illinois.

Q. How many years of experience have you had in freight traffic work?

A. About 30 years.

Q. Does your company have a plant in Florida?

A. We do have at Fernandina, Florida.

Q. What type of plant, Mr. Gordon, is that?

A. Wood pulp and pulpwood mill.

Q. What railroad serves your plant?

A. It is served locally by the Seaboard Air Line.

Q. What is the principal inbound commodity which you use at Fernandina, Florida?

A. The principal raw material is pulpwood.

Q. Are you familiar with the rates applying on pulpwood for your mill?

A. Yes, I am.

Q. Have they been a matter of study by you and your department for some time?

A. Yes, very much so.

Q. Why is that?

[fol. 542] A. Because the raw material cost is one of our principal costs in the manufacture of pulpwood.

Q. In what units are the charges on your pulpwood assessed?

A. In our plant at Fernandina, we use so-called 168 cubic foot units and that is the basis on which our freight rates are assessed.

Q. Are all of your shipments based on 168 cubic feet?

A. That is correct.

Q. How do the railroads convert that unit into pounds.

A. The railroads use a weight of 6800 pounds to arrive at the weight.

Q. How are the freight charges assessed?

A. Freight charges are assessed on the unit.

Q. Do you have any agreement with the railroad as to how the units shall be determined?

A. Yes, we have a weight agreement on scaling agreement. They take our scaling of the wood and then assess us on the basis of what our scale outturn is.

Q. Where are those measurements of wood taken, in Fernandina?

A. Yes.

Q. Are any other units than 168 being used?

A. Some other mills use a standard cord of 128 cubic feet and still others use 160 cubic feet.

Q. You have three different methods of assessing freight charges?

[fol. 543] A. That is correct.

Q. When the railroads are making up their statistics of tonnage of pulpwood, do they have any estimated weight stated in the tariffs per unit?

A. Yes; the Seaboard Air Line Wood Tariff, 2F ICC no. A-8125, effective September 30, 1946, page 7, item 40 provides that the estimated weights on pulpwood when the actual weight is not determined when the car is placed at destination are as follows: Per cord of 128 cubic feet, 5,000 pounds. Per unit of 160 cubic feet, 6,250 pounds. Per unit of 168 cubic feet, 6,563 pounds.

Q. Has there been any regular scale weighing of pulpwood cars at Fernandina on your shipments?

A. Not as far as I know. I do understand the practice on occasion is to weigh some of the cars. I don't know how recently that has been done.

Q. Does the system you are using save carriers the expense of weighing the cars?

A. Yes.

Q. Has there been any change in the average load of pulpwood to your plant since the early part of the year 1946?

A. Yes, in the period January through March 1946 our

average units per car were 11.69 which was the equivalent of 83,018 pounds per year, excuse me. Per car. Whereas the period January through March, 1949, the current year, [fol. 544] the average units had increased to 12.69 with the equivalent average load of 85,596 pounds.

Q. Has there been any substantial change in the length of haul during that period?

A. No, the length of haul during this three months' period in '46 was 125.85 miles and 121.84 miles for the period January through March, 1949.

Q. Were these estimates of average hauls based on weighted average of your shipments?

A. Yes, they were weighted averages.

Q. Has there been any change in the average revenue per car of pulpwood to your plant?

A. Yes, for the period January through March, 1946, the average revenue per car was $32.30 and the average revenue per car mile was 25.66 cents. For the period January through March 1949, the average revenue per car was substantially increased to $46.51 and the average car mile revenue was substantially increased to 38.17 cents.

Mr. Gwathmey: May I ask does that include all shipments, interstate as well as intrastate?

A. Yes, it does.

By Mr. Hillyer:

Q. Into your plant?

A. Yes.

Q. How many cars were used to determine those weighted averages?

[fol. 545] A. These averages for the '46 period were based on 1708 cars for the 1946 period and for the '49 period 1622 cars.

Q. To what do you attribute the increase in revenue per car and per car mile?

A. To two factors. The increase in the average loading and the increases in the rates themselves.

Q. Will you state whether in your opinion any further increases in the rates on pulpwood to your plant, intrastate in Florida, will produce additional aggregate revenue?

A. In my opinion the rates on pulpwood have been in-

creased to such extent that any further increase would undoubtedly cause a diversion of the traffic to other forms of transportation and particularly to the trucks so that the railroads would receive less aggregate revenue than they are now receiving at the present rates and average carloading of our pulpwood. I think it would be a mistake upon the part of the railroad management to add any additional increases on pulpwood to those which have already been imposed in Florida.

Q. Will you give some idea of the volume of movement of pulpwood to your plant? Will you express that in cars per day, per month and per annum?

A. For the first five months of 1949 our inbound shipments average 19.8 cars per day based upon 7 days a week. At this rate the volume of movements has been and is now running in round figures about 600 cars per month and [fol. 546] roughly about 7,000 cars per year.

Q. Is there much departure from this average of 19.8 cars per day?

A. No, the average continues day by day and week to week, month to month, throughout the year. There is very little seasonal variation there.

Q. Is this matter of regularity of movement of any importance to your mind in connection with the rates?

A. Yes, I think it would be quite an important bearing for it should be obvious that the regularity of the movement which is placed at our plant in one train load or one cut averaging 19.8 cars per day throughout the year should result in relatively low unit costs of operation, I should think.

Q. Has there been *in* increase or reduction in average cars per day, per week or per month since 1946?

A. Yes, there has been a substantial drop in the average cars. For example, in 1946 the average was 712 cars per month as compared with the average of 477 cars per month in this portion up to date in 1949.

Q. To what do you attribute this reduction in the average cars per month?

A. Two, primarily. There are two primary factors which have caused this decline. First, is the matter of the increases in rates. The increases in rates since the first part of 1946 have aggregated about 32 percent. During

[fol. 547] the same period the truck movements have increased about twelve percent in 1946 to 33 percent for the first quarter of 1949. These percentages relate to the number of units and not to the number of cars or number of trucks. In other words, I have used the unit which is common to truck movement and the rail car movement in order to give the correct comparison.

Another factor is that in 1946 about 44 percent of our cars are required a two line haul whereas, the increases in rates have caused us to exercise the greatest care in an attempt to eliminate as many two-line movements as possible. There has been a substantial drop in the proportion of cars which have moved over two lines as compared with a single line haul. Where the wood was coming from a point located on a line other than the Seaboard Air Line Railroad and would require a two line haul we, of course, have made every effort to draw that wood in by truck instead of over a two line haul because of the high combination rates for the two line haul.

Q. Was that due to the method of computing combination rates in Florida?

A. Yes.

Q. What effect would any further increases in single line rates and combination rates for joint line hauls have, in your opinion, upon your average inbound cars of pulpwood per month?

A. I confidently expect that any increases in the line haul [fol. 548] rates for single line hauls and particularly for joint line hauls under the present method of constructing combinations, would result in a substantial diversion of our traffic from rails to trucks.

Q. Did you tell us what form of equipment is used for your rail shipments of pulpwood to Fernandina?

A. In the year 1946 about 35 percent of the total cars furnished for pulpwood were rack cars. For the first four months of 1949 this had increased to 62 percent rack cars. All of the Seaboard Air Line Railway's single line movements in the first four months of 1949 were in rack cars.

Q. In your opinion should that factor have any weight in considering rates?

A. Yes, the fact that rack cars are furnished and used to a growing extent enables a quick turn around, quick unloading of cars, and greater utilization of this type of equip-

ment. This should have some effect upon the reduction of the unit cost in my opinion.

By Comm. Patterson:

Q. Under those circumstances, it always involved a line haul one way?

A. Yes.

Q. It does?

A. Yes, but that doesn't make any difference whether it is rack or box cars, because the type of box car they furnish could hardly be used for any other grade A commodity.

[fol. 549] Is this grade A?

A. No.

Q. You said grade A.

A. I mean it could not be used for shipments that require grade A cars.

By Mr. Hillyer:

Q. Is the turn around time of these cars the same now as it was formerly?

A. No, I am satisfied that the turn around time of rack cars now is much quicker than formerly when only a small percentage of racks were furnished.

Q. In considering the measure of rates, should the element of value be considered, in your opinion?

A. Yes, I think so.

Q. Will you give some idea of the relative value per ton of pulpwood at the point of shipment in the past and up to today?

A. On July 1, 1948, the price per ton, f.o.b. origin was $4.59 per ton and on January 1, 1949 was $4.53. A substantial drop has occurred since that date to $4.13 per ton on May 1, 1949. This more recent decline in prices conforms somewhat to the national economic situation. It is quite apparent that we are beyond the peak conditions in the post war period. Attention is directed to the fact that the average freight per ton on May 1, 1949, of $1.10 per ton was more than double the freight rate of 51 cents per ton on [fol. 550] January 1, 1938.

Q. You mentioned the relative volume moving by truck now as compared with former times. Will you state whether

or not your particular traffic is readily susceptible to movement by truck?

A. Pulpwood is particularly susceptible. The reasons are partly physical and partly competitive. There is a trucking movement into each plant from an area of about 45 miles surrounding that. The smaller trucks come directly out of the woods and go directly to the plants without any rehandling at the rail siding near the point of origin. At the destination the wood is picked up directly by slings with one movement of a crane for the entire truck load, and goes directly to a conveyor or to a storage pile with the one mechanical movement and without any physical labor handling whatsoever. The time required to pick up a sling load which is an entire small truckload, would be merely a matter of moments.

The more distant mill, using rails to get into that same tract of wood must take the competition of the nearest mill into consideration and the rail costs from that same tract ofr the longer haul, compared with the trucking cost and less expense of hauling truck movements into the nearby mill.

Any further increase in the rail freight rates and particularly in the combination rates, will increase our transportation costs on pulpwood in competition with other mills [fol. 551] who use trucks from a given area; and would result in the use of trucks from a much larger area than we use the trucks today.

With these factors in mind experiments are being made with larger trucks for a larger pay load in order to enable us to meet this competitive situation wholly within Florida. The expectancy in the future is that if the rail rates are further increased these larger trucks will be used for larger trucking areas and all of the mills will be compelled because of this competitive factor and the other advantages of truck movement to shift from rails to trucks.

Q. Who owns the trucks which are used for this pulpwood movement?

A. The trucks nearly all are owned by the farmers who own the wood or the dealers who bring the wood into our plant. There is no common carriage of pulpwood in truckloads in Florida to my knowledge.

Q. How does the time in transit for the truckload com-

pare with the rail shipments from a given point of origin?

A. The time required is very short compared with the time required for the rail movement from the same point of origin to the same mill.

Q. Based upon your present experience with trucks, about how long does it take for the average trip by truck from your trucking radius and from the point where the [fol. 552] wood is made available to your plant at Fernandina?

A. The time required for this truck movement on the average is about four and one-half hours. This is an important factor in considering the use of trucks as compared with rails. The rails take a number of days whereas the trucks take a number of hours for the journey to Fernandina.

Q. Do you have any wood coming in from other states to Fernandina?

A. Yes, sir, during 1948, two percent of the wood consumed at our plant came from interstate origin.

Q. What were the factors which accounted for this interstate movement of pulpwood to your plant?

A. Our principal competition is with the mills in Florida for Florida wood. We do not feel the competition of outside mills to any extent. Nor are we complaining of any adjustment of interstate rates into Georgia compared with the rates within Georgia. There are two reasons for this: First, there are the excessive freight rates from the non-trucking areas, and second, there is a lower delivered cost of the wood which moves in by trucks, and the faster time of the trucks and the avoidance of rehandling by trucks.

Q. Have you had any shipments from Georgia, for example, to Fernandina?

A. Yes, there is one situation particularly I have in mind, where from a point called St. George, Georgia, on the [fol. 553] GS&F we drew in some wood at a price plus freight, but the rail freights were so high interstate that trucking was resorted to. They found that they liked the trucking better than the use of rails, in addition to the saving in transportation expenses and they are buying semi-trailers so as to reduce the cost to get into Fernandina by truck. Hence, we can expect no further movement interstate from St. George, Georgia, to Fernandina by rail. This

is not an isolated instance. The man I was referring to has set the example which others can be expected to follow.

Q. What has been your experience in connection with the ratio of truck movements to rail movements on Florida intrastate pulpwood to Fernandina?

A. My experience shows that on January 1, 1946, there were no truck receipts to our plant. On July 1, 1946, the period when the general increases in rates really began, the truck movement increased to 4.4 percent. On January 1, 1947, the truck movement increased to 11.7 percent. On June 1, 1947, the truck movement was 12.9 percent. On January 1, 1948, it was 11.2 percent. On July 1, 1948, it was 21.6 percent and on January 1, 1949, it was 22.5 percent and May 1, 1949, it was 32.1 percent. And I would like to make a remark there in connection with this 32 percent. In 1946 we had a production of only 180 tons per day. Today our capacity is 300 tons, so that is 32 percent of a much [fol. 554] larger amount of wood today as compared with '46.

Q. What is the cause of this increase in your opinion and the ratio of truck to rail movements?

A. The principal cause is the increase in the rail freight rates. The other is the adaptability of trucks to this movement and the faster service and quicker turn around. Another factor is that since the war and 1946 the supply of trucks has become more plentiful and it is much easier to ship by truck regularly now than it was in the first part of 1946.

Q. Can you give some instances of the differences between the transportation charge for wood by rail and wood by truck to Fernandina?

A. Our company has had lower transportation rates by truck than by rail from the same point of origin. For example, from Callahan, Florida, to our plant the charge of rail transportation was $16 per unit of 168 cubic feet, and the charge per unit by truck was $15.25, or 75 cents per unit less by truck. From Kingsland, Georgia, the average cost per unit by rail was $16.30 and by truck $15.25, or $1.05 less per unit by truck. This means quite a substantial sum of money when the rail carload unit is taken into consideration.

From St. George, Georgia, the rail unit transportation

expense was $17.65 and by truck $16, with a saving of $1.65 by truck. This accounts for the fact that the movement from St. George, Georgia, to Fernandina is by truck and not [fol. 555] by rail. From Hilliard, Florida, the transportation expense by rail is $17.17 and by truck $15.75 per unit or $1.42 per unit less by truck than by rail.

It costs the farmer less to load on trucks than if he has to haul it to the rail head and then load it on to a car, and it costs the mill less to unload from the trucks than from the rail cars, either box cars or rack cars.

Q. Have you prepared some exhibits showing the comparison of rates on pulpwood in Florida with rates for like traffic in other states?

A. Yes, I have four. They have been identified as 85,—84, 85, 86 and 87.

Q. Will you explain these briefly?

A. My exhibit No. 84 consisting of two pages shows interstate carload rates on pulpwood published in Seaboard Air Line Railroad Company Wood Tariff No. 2-F, ICC No. A-8125. This exhibit shows present rates on pulpwood applying on interstate traffic between the states of Florida, Georgia, South Carolina and Georgia. The rates are the so-called Roanoke Rapids scale of rates. The road offered only 128 foot cord, or standard cord. However, some mills started using 5 foot and 5 foot-three lengths of wood and the rates on 160 cubic foot unit were made 25 percent higher than the 128 cubic foot cord basis and the rate on 168 cubic foot unit was made 31 foot, 25 percent higher than the 128 [fol. 556] cubic foot cord.

Now, my exhibit No. 85 is a statement showing Florida intrastate rates on pulpwood as published in the Atlantic Coast Line Railroad tariff, ICC No. B-3170, which are applicable when making combination rates from ACL Stations to Fernandina on Seaboard Air Line Railroad. The one-tenth of the class P rate for the Atlantic Coast Line factor of that haul is reduced ten percent as provided for in the Florida classification.

My number 86 consisting of two pages, is a statement showing the intrastate carload rates applying in the various states in Southern Territory. On page 2 of this exhibit, the right hand side, I have shown increases added on all these rates in all the states since 1938 under the various

Ex Parte cases. Column 2 and 3 under that second page shows that the rates in Florida have been increased as follows: Ex Parte 123, ten percent; Ex Parte 162, nine percent; Ex Parte 166, 20 percent, or a total of 44 percent, since 1948.

Column 4 shows rates of Georgia and page 2 shows as follows: Ex Parte 123, nothing, Ex Parte 162, 20 percent; Ex Parte 166, twenty percent, or a total of 40 percent.

Column five and six show rates in South Carolina and page 2 shows general increases as follows: 10 percent under Ex Parte 123, nine percent under Ex Parte 162 and none under Ex parte 166 or a total of 20 percent.

Column cover North Carolina.

[fol. 557] Exam. Mattingly: It isn't necessary to read all of that. It is shown very plainly on there.

A. All right.

By Mr. Hillyer:

Q. How do Florida rates stand in this present condition as compared with other states?

A. I would say very unfavorably.

Q. On the high side or on the low side?

A. High side because our mill in Fernandina is in competition with mills in North Carolina and South Carolina and all over the South.

I want to particularly deal with this two-line wood. My exhibit No. 87 shows the intrastate rates on pulpwood in Texas, to Houston, Texas, as published in the Texas Lines Tariff 60-F, ICC No. 688-A.

I call your attention to the fact that they provide both single and joint line rates into Houston. And it is rather significant that these rates were investigated in a 13 Section complaint and the commission found these rates reasonable but found them discriminatory against interstate shipments. As a matter of fact, I have shown this under Columns 4 and 5. I have added the 20 percent 166 increase which the ICC decided was proper. However, it has not been added today because the people have filed a petition with the ICC seeking a rehearing on pulpwood. So the Texas Commission did not order pulpwood rates until such time as the [fol. 558] ICC acts on their petition for reopening.

By Mr. Gwathmey:

Q. They have acted on it, have they not? Did you see the order that came out on it the other day?

A. No, I didn't. I showed the rates for comparison. I wanted to show that even with all these increases added that giveing them a total of 58 percent, I believe it is, in Texas, that particularly their two-line rates are much lower than some of our single line rates in Florida.

By Mr. Hillery:

Q. Going back for a moment to Exhibit 85, I don't believe you stated the fact of exactly how these Florida combination rates to Fernandina are constructed, did you?

A. No, I don't believe I did. But let's just assume for the sake of commentation that we have a car of wood that originates at a point on the Atlantic Coast Line and it is a 50 mile haul to the junction for the Seaboard and a 50 mile haul into Fernandina. The rate for the 50 miles on the Atlantic Coast Line would be the one-tenth of class P rates less ten percent or $2.22 and one-half cents per unit, to which must be added $2.14 for the 50 miles on the Seaboard Air Line or a total of $4.36 and one-half cents for a 168 foot unit. So we pay a penalty of $1.44 per unit when we draw a two line haul into our Fernandina plant.

Q. As to investment in terminal facilities, do the railroads have to have any particular warehouses or tracks and [fol. 559] so forth, for the pulpwood traffic to your plant?

A. No, sir.

Q. Do they have any at points of origin?

A. They have some loading docks around some places, but most places they don't even have sheds. They just have a railroad siding.

Q. Is that a siding ad-acent to the main line?

A. Correct.

Q. And the farmer loads his cars there on the siding?

A. That is right.

Q. Have you provided your own tracks at Fernandina?

A. Yes, we have got side tracks valued at about 92 thousand dollars inside our plant property.

Q. Does that include platforms and things of that sort?

A. Exclusive of the loading platform.

Q. Do you have any locomotive power of your own for spotting within the plant?

A. Yes, we have a locomotive crane which is used primarily for unloading pulpwood from cars but can be used to switch one or two cars around if we need that.

Q. What was your investment in that crane?

A. About 25 thousand dollars.

Q. Are all your pulpwood cars delivered to your plant? Do they use public tracks to Fernandina?

A. No these old cars are shoved right into our yards. [fol. 560] Q. How are they brought in? From time to time during the day?

A. They come in once a day and they bring in these 20 cars and place them all at one time.

Q. Is any respotting done by the engine after it comes in?

A. Occasionally there might be, where probably they brought cars in in excess of what we could take care of unloading and they were put in some other track and the next day they come in and respot, but that is not the usual thing.

Q. When they arrive in Fernandina, do they have to take and cut that up and select particular cars?

A. No, not as a general rule.

Q. In Exhibit 87 you point out the various differences in pulpwood stations in numerous Southern states. Have the East Florida pulpwood mills given any thought to that matter with some idea of seeking some uniformity in these rates?

A. Did you say East Florida mills?

Q. Yes.

A. Yes, the Southern paper traffic conference, of which I am a member, and all the mills in the South,—Traffic Managers of all mills in the South, are members of that association; for several years we tried to get together and go to the carriers and try to get this pulpwood scale within the whole South, or throughout the south made uniform. About two and a half months ago we all got together on that in perfect agreement and went to the railroads and pre- [fol. 561] sented our case to them. We offered that if they were willing to accept fifty percent overall increase on the rates in effect prior to Ex Parte 123 that we would go to our various State Commissions, each mill in its own state

would go to the State Commissions and do everything possible to try to get the State Commissions to let them raise the rates and make them all the same, interstate and intrastate and tied in with the fact that every mill certainly draws a lot of interstate wood. So we don't believe that the carriers would be any worse off if they accepted our offer. They would have to reduce the increases they have added to interstate rates, but we feel sure they'd be much better of in the long run because of the preponderance of interstate wood going into the mills. They haven't acted on that suggestion.

Q. To what committee was that presented?

A. Pardon me?

Q. To what committee was that presented?

A. To the Southern Executives and that happened about two months ago.

Q. Executives of the Southern Railways?

A. Executives of the Southern Railways.

Q. Was one of the purposes to avoid this series of cases and litigation in the various states over pulpwood?

A. Yes, that was really behind it.

Q. Have these proceedings in these various states been of any concern to the Southern Pulp and Paper Association?

[fol. 562] A. Yes, they have been given serious consideration to all the mixed up condition of rates down South where competition is paying 20 percent less than you are and so forth. That was the first time that we have ever got all the mills to agree to any such thing.

Q. In mentioning the rates on Exhibit 86, are all of those states,—do they have scales which approximate the basic Roanoke Rapids scale and increases applied to those scales or are they different scales?

A. All rates shown for all those Southern States, with the exception of Tennessee,—no, with the exception of Mississippi, I should say,—are the Roanoke Rapids scale. Of course, the Mississippi scales are on a different basis.

Q. Are the Texas rates shown in Exhibit 87 on that Roanoke Rapids scale?

A. No, they are not. I don't know what the basis for those rates are.

Q. Is there anything I have overlooked you want to bring out?

A. I don't think so.

Cross-examination.

By Mr. Gwathmey:

Q. I believe you said you represent the Container Corporation of America?

A. That is correct.

Q. Does your company operate plants in the various parts of the country?

[fol. 563] A. Yes, three different parts of the United States.

Q. What sections, speaking generally?

A. In all sections of the country, every major territory in the country.

Q. Was the Container Corporation actively represented in the proceedings before the Interstate Commerce Commission in Ex Parte 166?

A. 166? We did not oppose the carriers in any respect on outbound rates, but we did object to any further increases on our pulpwood.

Q. Pulpwood?

A. Yes, sir.

Q. Other paper manufacturers and users of pulpwood also appeared in and introduced extensive testimony before the Interstate Commerce Commission, did they not in that case?

A. Yes.

Q. They were well represented?

A. Yes, the whole paper group were together on that.

Q. Did the paper industry not present before the Interstate Commerce Commission some of the same arguments you are presenting here today as to why there should be no more increases in pulpwood rates?

A. I don't know if they were the same. They were similar, of course, because we have been very much alarmed at the greatly increased rates on our raw materials.

[fol. 564] Q. In all these proceedings of one sort or another, one of your principal difficulties has been such a

wide variation in intrastate rates in the various Southern States, isn't that right?

A. Yes, sir.

Q. Just one question about your exhibit No. 86 where you show the intrastate rates in South Carolina. You don't mean to suggest that the rates shown in column five apply generally in South Carolina, do you?

A. No, sir.

Q. They are limited?

A. No, sir, that implies Georgetown and Hartsville, South Carolina.

Q. On Seaboard Air Line?

A. Yes, sir.

Q. Up to the comparatively recent recession or depression, or whatever you choose to call it, when the paper industy business has been falling off,—we all know the demand has been very active for a number of years for paper products.

A. Yes, for about ten.

Q. And isn't it true that the manufacturers were really reaching out for pulpwood almost anywhere they could get it?

A. That was a labor situation brought on by the war and we had to go much greater distances than in normal times.

Q. In some instances pulpwood moved as far as three or [fol. 565] four hundred miles?

A. I think that is true during the war. I doubt that is going to continue or is continuing now.

Mr. Gwathmey: I think that is all.

Comm. Patterson: You are excused.

Mr. Hillyer: I have a few more questions.

Redirect examination.

By Mr. Hillyer:

Q. Would you care to state approximately the total freight charges on inbound material and outbound at Fernandina?

A. For the year 1948 on inbound pulpwood the freight bill was around $450,000 and the outbound transportation

bill on finished products was about a million and a half dollars. That is almost two million dollars.

Mr. Hillyer: That is all I have to ask.

Comm. Patterson: You are excused.

(Witness excused.)

Mr. Hillyer: I would like to offer exhibits 84 to 87, inclusive in evidence.

Comm. Patterson: There being no objection, the same will be received for the record.

(Exhibits Nos. 84 to 87, inc., Witness Gordon, received in evidence.)

Mr. Hillyer: We have a man from the plant to follow Mr. Gordon. Would you like to hear him? It will only take a few minutes.

[fols. 566-567] Comm. Patterson: We've got to recess. Off the record.

(Off the record.)

Comm. Patterson: On the record. We will recess until nine o'clock tomorrow morning.

(At 5:10 o'clock p. m., June 29 1949, hearing adjourned to 9:00 o'clock a. m., June 30, 1949.)

[fols. 568-569] Ocean Room
Sheraton Plaza Hotel
Daytona Beach, Florida
Friday, July 1, 1949.

Met pursuant to adjournment at 9:00 o'clock a. m.

[fol. 570] PROCEEDINGS.

Comm. Patterson: Come to order. You may proceed, gentlemen. Mr. Hillyer, I think you had a witness to go on this morning?

Mr. Hillyer: Yes, sir, we have four ready.

R. Y. Patterson was sworn and testified as follows:

Direct examination.

Mr. Hillyer: I expected to introduce Mr. Patterson's testimony in question and answer form and we prefer to do it that way. Of course, we will be guided by our wishes.

Comm. Patterson: I think perhaps we would save time by putting it in as an exhibit and we will identify it as Exhibit No. —. Off the record.

(Discussion off the record.)

Comm. Patterson: On the record.

By Mr. Hillyer:

Q. State your name, address and occupation?

A. R. Y. Patterson, Vice President, Engineering, United States Sugar Corporation, Clewiston, Florida.

Q. In what business is your company engaged?

A. In the growing of sugar cane, transporting the sugar cane to the mill, making the sugar cane into raw sugar and blackstrap, and the outbound shipment of raw sugar and blackstrap to interstate destinations.

Q. State your business experience briefly?

[fol. 571] A. Most of my life has been devoted to the construction, maintenance and operation of railroads, such as and including lines of the Southern Pacific in Arizona, New Mexico; the Frisco System, including the construction of the line north from Pensacola, Florida, the New Haven, New York Central and Boston & Albany, in their Engineering Departments; I was also in charge of the construction of the Conners Highway.

Q. Have you worked with any well-known engineers?

A. Yes, I worked under Mr. John F. Stevens in the valuation of the New Haven. Mr. Stevens is known as the builder of the Panama Canal. I also worked with Professor George F. Swain, head of the Engineering School of Harvard University, in connection with the revaluation of the New York Central.

Q. Describe briefly the nature of your duties with your company as Vice President?

A. I have charge of the operation of conveying the cane

from the loading points in the various fields to the mill, including the weighing of the cane and the hauling and unloading of the cane. I also have charge of the shipment of the outbound manufactured products. That, *of* course, entails a lot of detail, such as preparing bills of lading, etc., keeping of all records pertaining to transportation; keeping track of the routing of both outbound and inbound products, and all general contacts with the railroads on any kind of business. I also have charge of engineering matters in [fol. 572] connection with the location, construction and maintenance of tracks, loading hoists, unloading equipment, track scales, and the rail equipment in which the can is handled, and the operation of the terminal yards at Canal Point and Clewiston. I also have charge of the maintenance and construction of the intermediate loading sidings.

Q. Do you own any locomotives used in the handling of your company's traffic?

A. Two of the locomotives are used in the sugar cane fields east and south of Canal Point, where connection is made with the Florida East Coast. Five steam locomotives, which are owned by this company, are assigned to the operations of the company in the vicinity of Clewiston.

Q. Do you own any equipment which is used for your sugar cane traffic?

A. Yes, all of the equipment used for *us*gar cane is especially constructed for this traffic. The cars are open cars with high racks built on to the sides.

Q. How many of those cars do you own?

A. We own and maintain 469 of these cane cars which are devoted exclusively to the hauling of sugar cane to the Clewiston mill. All of our sugar cane moves exclusively in our own equipment and no*en* in railroad owned cars or equipment.

Q. Who performs the weighing of your inbound shipments of cane and outbound products?

[fol. 573] A. We do and at our own expense. We have two one hundred ton standard railroad track scales which are located at our Clewiston mill for the weighing of inbound shipments of sugar cane and outbound shipments of sugar and blackstrap.

Q. Do you own and maintain sidetracks for loading sugar cane?

A. Yes, we own and maintain sidings and specially constructed hoists for loading sugar cane onto our cane cars at 20 points, four of which are on the Florida East Coast between Canal Point and Lake Harbor, seven of which are on the Atlantic Coast Line between Moore Haven and Lake Harbor, and eight are east and south of Canal Point on our own tracks, and one is located in our yard at Clewiston.

Q. What is the total trackage of railroad, owned, operated and maintained by the sugar company?

A. We own and maintain 11.84 miles of railroad tracks east and south of Canal Point. In our Clewiston operations, we own and maintain 16.12 miles of road. The loading of sidings which run from the Atlantic Coast Line and Florida East Coast between Moore Haven and Canal Point which are owned and maintained by us total 5.45 miles of connecting switch tracks. Th-s makes a combined total of 33.41 miles of railroad which we own and maintain. The operations of engines on all but 5.45 miles of these tracks is performed by the sugar company exclusively.

[fol. 574] Q. What is the length of the road of the Florida East Coast from Canal Point plus the length of the Atlantic Coast Line to the loading point farthest west of Clewiston?

A. 41 miles.

Q. Then all of these sugar cane operations are confined to 41 miles outside limit?

A. Yes.

By Comm. Patterson:

Q. Is all this service on that 41 miles performed by your company? Do they perform all the service on this 41 miles?

A. No, the service on the 41 miles is performed by the carriers. My statement is the only of ownership of that track, of the track auxiliary to the carrier track.

Q. And in the performance of that service, the carriers use your equipment?

A. Yes.

By Mr. Gwathmey:

Q. I don't like to interrupt, but the Commissioner asked if the carriers use your equipment and you said yes.

A. No, the cars.

Q. Use your cars and you pay—and they pay you a rental and use their own engines?

A. Yes, sir.

By Comm. Patterson:

Q. The carriers own the engines and the sugar company own the cars?

[fol. 575] A. Yes, sir.

By Mr. Hillyer:

Q. Are you speaking now of the two lines of common carrier railroad, the 41 miles on which they operate your engines and your cars and then on 33.41 miles you operate your own engines and your own cars?

A. Yes.

Q. That is in addition to the 41 miles of company carrier tracks?

A. Yes, we operate on the terminal yards.

Q. Will you summarize briefly your investment in railroad transportation facilities which are owned and maintained by you and used in the transportation of sugar cane?

A. Our 33.41 miles of yard tracks and outside loading tracks represent an original cost today of $586,030.35. Our facilities at loading sites, exclusive of cane hoists (excluding loading costs and rights of way) represent an investment of $300,425.04. Our seven locomotive, 469 cane cars, 2 water tank cars, three flat cars, three labor cars and forty-two other cars, represent an investment of $955,588.46.

This makes a total investment in railroad transportation facilities, power, and rolling stock of $1,541,618.81. This investment is exclusive of the cost or value of the land upon which our railroad facilities are located and 20 cane hoists installed which cost about $400,000.

Mr. Gwathmey: We are having a little difficulty in hear-

[fol. 576] ing you. Would you mind trying to speak a little louder? Thank you.

A. This makes roughly in round numbers around $2,000,000 in investment in our own rail facilities and hoists.

Q. In the railroad facilities and hoists?

A. Yes.

By Mr. Hillyer:

Q. Were you put to any expense in the acquisition of land in order to secure common carrier railroad service from your cane fields east of Canal Point to your plant at Clewiston?

A. Yes, before our plant was built at Clewiston, the Atlantic Coast Line, which goes around the west side of Lake Okeechobee terminated at Clewiston. The Florida East Coast, extending south around the east bank of Lake Okeechobee terminated at Belle Glade. This left a distance of about 18 miles between the terminus of the Atlantic Coast Line at Clewiston and the terminus of the Florida East Coast at Belle Glade.

In order to induce the carriers to build the line from Belle Glade to Clewiston, we had to acquire at our own expense land for the right of way from Belle Glade to Clewiston.

We acquired the land and gave it outright to the common carrier railroads. Thus the Florida East Coast was given the land from Lake Harbor to Clewiston on which to build the lines which provided the connecting link for these two carriers on the south of Lake Okeechobee.

[fol. 577] The cost of this land which we gave to the Florida East Coast and the Atlantic Coast Line was a very substantial one, and about $75,000.

Q. What is your total investment in rail facilities, including donated land, but excluding your own land?

A. Our total investment in tracks, power, rolling stock, cane hoists, and donated land, equals about $2,016,618, not including any land upon which our own tracks are located. In other words, about $2,000,000 has been expended by my company for railroad tracks, equipment and facilities, and cost of land from Belle Glade to Clewiston which was donated to the carriers.

Q. Are the tracks of the Atlantic Coast Line from Clewiston to Lake Harbor and the line of the Florida East Coast from Lake Harbor to Belle Glade used exclusively for the movement of inbound sugar cane to your mill at Clewiston?

A. No, since the building of that line there has been a substantial new development of the growing of vegetables along that line and the location and development of new com-

munities, such as South Bay, Bean City, Lake Harbor, and in Belle Glade south of the Canal.

Q. Is there any production on the line between Belle Glade and Canal Point?

A. Yes, there is a tremendous production of fruits and vegetables on the Florida East Coast between Belle Glade [fol. 578] and Canal Point. There are many thousands of cars of vegetables shipped from that area. I doubt if there is any other area in the South where there is such a high volume of fruits and vegetable traffic originated on any one line of railroad for that short length of haul between Belle Glade and Canal Point.

Q. What is the principal point at which the Florida East Coast or the Atlantic Coast Line picks up cars of sugar cane?

A. By far the most important point is Canal Point on the Florida East Coast. In 1946-47 harvest season, we turned over to the Florida East Coast at Canal Point on the interchange tracks, 15,990 cars out of the grand total of 31,481 cars of cane handled by the Florida East Coast.

Q. How many cars were turned over to the Florida East Coast at Canal Point in 1947-1948?

A. A total of 12,007 out of a grand total of 24,954 cars of cane handled by the Florida East Coast.

Q. What were the similar figures for the 1948-1949 season?

A. We handed to the Florida East Coast at Canal Point in the 1948-1949 season 15,301 out of a total of 28,396 cars of cane handled by the Florida East Coast.

Q. This does not include the cars picked up by the Coast Line west of Clewiston?

A. No.

Q. That is merely the Florida East Coast cars?

[fol. 579] A. Florida East Coast cars east of Lake Harbor.

Q. Will you describe briefly the service performed by the Florida East Coast at Canal Point in picking up these cars, Mr. Patterson?

A. In the area east and south of Canal Point where we have 11.84 miles of our own track reaching through the cane fields we do all of the placing of strings of empties and picking up the loaded cars with our own engines.

The Florida East Coast delivers strings of empties to us on an interchange track owned by us at Canal Point. At the same time that engine then hooks on to a long string of loaded cars which we have assembled for them and which are ready and waiting on the interchange track and the Florida East Coast hauls those cars down to Lake Harbor, picking up cars at some of the five loading tracks as they go along. At Lake Harbor the entire train of loads, including the caboose, is left on a track of the Atlantic Coast Line and an Atlantic Coast Line engine picks up the train and may pick up a few of the loads between Lake Harbor and Clewiston, taking the train over to the interchange yard at Clewiston. There we hook on to the train of loads and take it into our mill. The Coast Line engine then picks up the train of empty cars on our yard tracks and most of them go to the Florida East Coast at Lake Harbor where the Florida East Coast engine merely hooks onto the train of empty cars and takes them up northeastward along its line. Some of them go out to the different Coast Line loading tracks. Most [fol. 580] of the Florida East Coast train of empties is left at our interchange tracks at Canal Point.

Q. From your knowledge of the handling of freight by railroad, how would you describe this service of the Florida East Coast from Canal Point to Lake Harbor?

A. As to the loaded cars which are made up into trains for them by our switch engines and handed to them at the interchange yard at Canal Point, I would describe this movement to Lake Harbor of those cars by the Florida East Coast as the movement of an intermediate carrier between our line on the one hand to Canal Point, and the Atlantic Coast Line at Lake Harbor on the other side. The Florida East Coast service is less expensive to it than that of an ordinary intermediate carrier in that at times we boost the train for the Florida East Coast with our engine.

By Mr. Gwathmey:

Q. What do you do to those trains?

A. Boost them out.

Comm. Patterson: They help them out.

Mr. Gwathmey: Thank you, I didn't understand.

A. All the Florida East Coast does is to hook on the caboose at Canal Point. At Lake Harbor they do not even take off the caboose; there is no intermediate line switching, classification switching, or yard switching anywhere from the time the Florida East Coast hooks on at Canal Point until it cuts loose at Lake Harbor.

[fol. 581] By far the most important loading point is Canal Point where these trains of loaded cars are handed to the Florida East Coast and the movement from Canal Point to Clewiston is the very longest haul of any of the cane traffic. The total revenue net ton miles originated at Canal Point for the season 1948-1949 was 68.5 percent of the total revenue net tons miles for the entire sugar cane movement to Clewiston via both lines.

Q. On the cars which are handled first by the Florida East Coast and then by the Atlantic Coast Line from Lake Harbor to Clewiston, how would you describe that movement by the Atlantic Coast Line?

A. That movement, I would describe, as being that of an intermediate carrier, as between the Florida East Coast on the one hand, and the engines of the sugar corporation on the other hand.

Q. When those loads come into Clewiston, where are they placed? Are they placed in your own yard?

A. Yes, in our own yard tracks.

Q. Is there any switching of empties performed by the Florida East Coast or the Atlantic Coast Line in connection with your movements of sugar cane which you would designate as classification switching?

A. No, there is no classification switching of empties performed by the Florida East Coast or the Atlantic Coast [fol. 582] Line. The empty trains are made up by our engines on our property at Clewiston, and the Atlantic Coast Line merely has to couple to the train, hook up the air, test it, and go. There is no classification switching at Lake Harbor, where the trains of empties are turned over to the Florida East Coast by the Atlantic Coast Line. There is no classification switching at Canal Point of the empties. All of the empties are merely left just at the connection of the Florida East Coast with our line of road, without any car spotting or switching whatsoever. The loaded movement in the reverse direction is the same. There is no

classification switching performed by the trunk lines whatsoever at Canal Point, Lake Harbor, or Clewiston.

Q. Describe briefly the local pick up service on the Coast Line at other special loading tracks which you have designated?

A. The Coast Line engine taking the empties out of our yard tracks going to a local siding on its line in the direction of Moore Haven, would cut off the required number of cars at the head end and place them in the parallel sidings. Upon the return of the engine it picks up the loads from the other end of the siding, the cars having been loaded in the direction of the mill. This obviates any switching at the loading hoists. That is the very simplest type of pick-up service.

[fol. 583] Q. Can you give a close approximation of the average number of cars per train operated in the handling of your sugar cane?

A. Yes, we have very complete and accurate records from which such figures can be determined. During the 1946-'47 harvest we operated 1,031 empty trains. These trains handled 49,250 cars or an average of 47.77 cars per train.

Now to break this down between the Florida East Coast and the Atlantic Coast line, the Florida East Coast handled 552 trains, which delivered 31,862 empty cars to the fields. This is an average of 57.72 cars per train.

The Atlantic Coast Line operated 479 trains of empty sugar cane cars, which handled 17,388 cars or an average of 36.30 sugar cane cars per train.

In making this separation it should not be overlooked that the 552 trains handled by the Florida East Coast left Clewiston via the Atlantic Coast Line and these are not included in the Atlantic Coast Line trains which represent only the trains handled by the Atlantic Coast Line alone. The trains were shown in this manner just as if the Florida East Coast were a separate operation all the way from Clewiston to Canal Point. The Atlantic Coast Line figure of 479 trains covers only the empties destined to Atlantic Coast Line stations.

[fol. 584] The loaded movement in number of cars is practically the same as the number of empty cars handled by the Coast Line and the Florida East Coast respectively. This does not mean that the consist of every loaded train move-

ment is the same as the consist of every empty train movement. There will be differences, of course, but every car which is sent out empty comes back loaded.

May I direct attention to the fact that in giveing the total number of trains which we operated, namely 1,031 trains, I said empty trains. There would be approximately an equal number of loaded trains in the reverse direction, although there need not necessarily be exactly the same so far as our operations at the Clewiston mill are concerned.

From our records we can determine the exact number of cars and the exact number of trains empty and the exact number of trains of loads and number of cars therein handled at each hour of the day. My records also show the number of cars from each hoist or loading point.

Q. Do you have similar figures for a more recent season? If so, state what they are?

A. For the 1948-1949 season, there were 1,280 trains of loaded cars of sugar cane.

Q. How many loaded cars of cane were handled in those trains, Mr. Patterson?

A. A total of 42,930 loaded cars, which makes an average [fol. 585] of 33.5 loaded cars per train.

Q. In the regular course of your duties, do you keep an accounting of the expenses incurred by you in the operation of your switch engines in connection with the transportation of cane from the fields to the mill at Clewiston?

A. Yes, from day to day and from month to month, our accounting division, in connection with our traffic and transportation divisions, keeps very accurate records of our transportation costs, both of our inbound cane and also for the switching of outbound products to the Atlantic Coast Line interchange yards at Clewiston.

Q. Will you give a brief indication of the particularity with which your operating expenses on inbound cane are kept?

A. Our records show the total operating expenses on inbound cane usually from the commencement of the season and by half-months or months through the end of the season. They show the number of tons, and the cost per ton hauled. They also show a separation of the costs of cane coming in-ound from east of Clewiston as distinguished from cane coming in from west of Clewiston.

Q. Will you describe briefly the major classifications of operating expenses which appear in your regular accounting statements?

A. Our operating expenses are broken down into some 22 different items, such as train crew labor, foreman and [fol. 586] assistants, clerks, supplies of various kinds, locomotive engine labor, repairs to locomotives and rolling stock; cost of materials for repair to locomotives and rolling stock; labor costs for maintenance of road bed and tracks, and material used in maintenance of road bed and tracks, repairs to buildings, etc.

Q. What general accounts are included in your total operating expenses?

A. We show such items as taxes, depreciation, amounts received for car hire, etc. The railroads allow us two cents per loaded mile for each loaded car hauled.

Q. Will you give an indication of your total operating expenses on inbound cane for some period and the translation of your costs into a revenue ton basis?

A. For the period November 11, 1947, to December 31, 1947, our inbound tons of cane amounted to 170,407.58. Our total operating expenses were $160,883.25. The average expense per revenue ton of cane was 9.41 cents per ton.

This included amounts of freight paid to the railroads for their portion of the haul under the present rates.

Mr. Hillyer: We ask to have marked for identification a statement consisting of two pages marked: Detailed statements of operating expenses and inbound freight on cane." This will be No. 155.

Comm. Patterson: That has already been marked as [fol. 587] No. 155.

By Mr. Hillyer:

Q. Mr. Patterson, is this exhibit 155, does it contain the figures which you presented to the Railroad Commission of Florida in the general increase case before it and the case in which the Florida Commission declined to permit any increases on the rates on sugar cane? These are the same figures, are they, you presented in that case, Docket 1574?

A. Well, I haven't that sheet here.

Mr. Gwathmey: Her- it is, Mr. Patterson, if you want to look at it.

A. Yes, that is the same statement.

Mr. Gwathmey: Mr. Hillyer, may I interrupt just one moment?

By Mr. Gwathmey:

Q. Mr. Patterson, I notice your exhibit No. 155 purports to show operating expenses November 11, 1947, to December 31, 1947. My impression is that the figures which you presented before the Florida Railroad Commission at the hearing in its Docket No. 1574 were for the 1946-1947 season? Is there some mistake there?

A. No, we just happened to have at that time this schedule made up and that was November 11, '47, to December 31, '47. I identified this as being that statement that was used at that time.

Q. Perhaps you'd like to explain to the Commissioner [fol. 588] what you mean as the season. What is the period of movement of the cane ordinarily?

A. From October the tenth, or the first week of October, as soon as the sugar content will permit the operation of the mill and the season usually extends into the latter part of April.

Mr. Gwathmey: Thank you.

Comm. Patterson: You may proceed.

By Mr. Hillyer:

Q. In the testimony before the Florida Commission, were the figures you gave November 11, '47 to December 31, '47, practically identical with those shown in your testimony here today and in Exhibit No. 155, with a minimum of corrections?

A. Yes.

Q. And as to the total figure of 94.41 cents on Exhibit No. 155 is that the same figure which you used before the Florida Commission?

A. Yes.

Q. Of the total of 94.41 cents expense per inbound ton

for cane, how much of that represents freight charges paid to the railroads?

A. The 94.41 cents per ton included 44.81 cents per ton paid to the railroads.

Q. Go ahead.

A. Deducting 44.81 cents paid to the railroads from the total of 94.41 cents, leaves approximately 50 cents per ton [fol. 589] as our cost for our *94.41 cents leaves approximately 50 cents per ton as our cost for our* portion of the total services on the inbound transportation. In other words, it cost us 50 cents more per ton than we paid to the railroads.

We have to spend more for hauling our inbound cane than the freight charges we paid to the railroads for their portion of the haul.

Q. Have you made any estimates of the cost of the cane movement performed by the Florida East Coast and the Atlantic Coast Line for which you pay this average of 44.81 cents per ton?

A. Yes, of course, the average cost per ton which we pay to the railroads would vary from time to time, according to the loading points from which the cane was received, but we have an estimate of the cost to the carriers themselves.

Q. Do the men in the employ of your company keep records of each inbound movement of cane?

A. Yes, very minute records are kept, showing the loading points, the number of cars, and the number of tons in each movement. In this way, my men also keep account of each engine of the Atlantic Coast Line which brings the cane to the interchange tracks at Clewiston. My men also know the number of men employed by the Florida East Coast and the Atlantic Coast Line who operate these trainload movements of cane to the interchange tracks at Clewiston. They also know the rates of pay and we also can compute the [fol. 590] approximate the amount of fu*le* used by their locomotives in hauling our cane.

Q. Do you know the actual cost of maintenance of these patricular tracks between Moore Haven and Canal Point?

A. No, we do not have the exact maintenance costs and in order to arrive at an estimate of their maintenance costs we would have to go to their reports to the Interstate Commerce Commission and use the ratio which their mainte-

nance costs for a particular year bear to their transportation costs. This is not an exact method, of course, but affords some method of computation of the cost of it to them of the movement of our cane.

Q. What ratio did you use for maintenance of way expenses to total transportation expenses?

A. We used a ratio of 55.12 percent which was the ratio of the Atlantic Coast line as a whole for the year 1946, which was the latest then available year in the Interstate Commerce Commission's reports.

In using this maintenance ratio of 55.12 percent, it is my belief that it is higher than the actual would be for the reason that the road bed is not very costly and there are very few substantial structures to maintain and the road does not operate through a heavily populated area; no classification yards, and none of the usual terminal buildings and facilities. Furthermore, my distinct impresson is that the Atlantic Coast Line ratio for maintenance to transpor-
[fol. 591] tation expenses in 1946 was extremely high and abnormal.

Q. In determining the taxes to be paid by the Coast Line for this track which you have given them between Clewiston and Lake Harbor, will you state whether any ordinary method of apprortioning taxes in the aggregate on a tonnage or car mile basis would be a fair method for sugar cane?

A. I think that the only fair method of computing the taxes and the costs of the railroads for this sugar cane movement is to take into consideration what they actually paid. I do not know their actual payments, but I happen to be the Mayor of Clewiston, Florida, and as I recall it, the city taxes are assessed against the Coast Line on a valuation basis of about $3,150 per mile, which includes all stations, office buildings, structures of every kind, in addition to the land, road bed and tracks, and equipment. With this in mind, I should say that the amount of taxes which could fairly be allocated to the cost of the sugar cane movement would be very, very small.

Furthermore, all of the general freight which is handled over these lines, including the enormous movement of fresh vegetables, as well as inbound materials and supplies, should bear their full proportion of any taxes collected for these portions of the lines.

Q. Were you able to translate your costs into actual movements on a revenue ton-mile basis?

[fol. 592] A. Yes, our records enabled us to compute exactly the revenue ton mile of cane hauled by the Florida East Coast and the Atlantic Coast Line separately.

Q. From your actual statistics, will you give a summary of the movements for the 1946-47 crop? Are these shown on page 2 of your exhibit No. 155? You have shown there the car miles *of* ton for that period of November 11 to December 31, 1947. Are you giving the similar figures made up in the same way for that entire year's scope, 1946-1947?

A. Yes.

Q. Go ahead.

A. For the 1946-1947 crop, the car miles in the loaded direction were 778,913. The cars handled by the carriers totaled 48,671. Tons handled by the carriers totaled 996,376.76. Ton miles of cane, loaded direction, 15,944,349. Total actual car rental received at 2 cents per mile, loaded direction, $15,845.44.

Q. That amount was paid to you by the railroads for the use of your equipment?

A. Yes.

Q. And that is a credit?

A. Yes.

Q. Do your records also show the number of cars loaded at each point separately for the Florida East Coast and the Atlantic Coast Line?

[fol. 593] A. Yes, for the 1946-1947 harvest, the cane carloading at stations short of the Canal Point and turned over to the Florida East Coast at Canal Point, plus the loadings at the five tracks on the Florida East Coast, totaled 31,481, and on the Atlantic Coast Line, nine loading points, 17,190 cars, or a total of 48,671.

Q. Using the term "stations short of Canal Point", what do you mean? Do you mean the stations east of Canal Point served by your engines?

A. Yes.

Q. Based upon the methods which you describe, can you state now your estimate of the cost of the cane movement to the Florida East Coast and Atlantic Coast Line for the 1946-1947 season?

A. Yes, our estimate of the total operating costs for our cane for the 1946-1947 season, allowing interest and depreciation, and 10 per cent for profit and taxes on income, was $409,000. The revenue on basis of the then existing rates was $326,000; or payments to the two carriers collectively of $17,700 more than the ten percent profit which we included in our estimates.

Q. Now, were the figures you have just given substantially the same, perhaps with minor changes, as those submitted to the Florida Commission in that hearing?

A. Yes.

[fol. 594] Q. Do you contend that the estimates that you have made are exact?

A. No, of course we could not do that because I do not have access to the railroads' own accounts. However, I believe that for the purposes of this proceeding the estimates I have made are fair and reasonable and the results fully justify our position before this Florida Railroad Commission asking that no increases be permitted in the rates on sugar cane to Clewiston.

Q. Were the estimates which you have given for the November 11, 1947, through December 31, 1947, period presented by you in the case before the Florida Railroad Commission where the railroads were proposing increases in rates?

A. Yes.

Q. Was any rebuttal evidence presented by the carriers in that proceeding of these estimates you have made?

A. No.

Q. Have you prepared similar evidence of your costs and the trunk line carriers' costs for the sugar cane traffic for any later season in a similar manner? If so will you give the results of these studies?

A. For the 1948-1949 season, our inbound tons of cane hauled by the railroads amounted to 912,697.70. The total amount paid to the railroads for the transportation of those tons amounted to $400,774.39, or an average of 43.9 cents per ton. This is a fraction of a cent per ton less than [fol. 595] we paid to the railroads for the movement during the November 11-December 31, 1947, period.

Q. Just a minute.

By Mr. Hillyer:

Q. Would you give that per ton figure again?

A. 43.9.

Mr. Hillyer: We ask to have marked for identification an exhibit consisting of four pages.

Comm. Patterson: Let's have it and take a look at it.

Mr. Hillyer: Which will be offered later by another witness, but there will be figures on this to which Mr. Patterson may want to refer.

Comm. Patterson: Off the record.

(Discussion off the record.)

Comm. Patterson: On the record. You may proceed, Mr. Hillyer.

By Mr. Hillyer:

Q. Mr. Patterson, will you go ahead with your statement?

A. The estimated total operating costs excluding return on investment and taxes on railway property for the service performed by the two railroads in hauling this cane amounted to $25,301.93, or an average cost of 27.9 per ton.

The bases upon which these total costs to the railroads were computed and the methods employed will be described by a witness who will follow me and who made the compu- [fol. 596] tations. I have sat in upon the computation of those costs, however, and believe they represent a reasonable approximation of the estimated costs.

Q. Has there been any change in the method of assessment of taxes against the railroads since you made your first study for 1946-1947?

A. Yes, the assessment has been practically doubled.

Q. Has the new rate of assessment been used in computing the taxes and the total costs for the 1948-1949 season?

A. Yes, the amount of taxes paid to the City of Clewiston in 1947 was $460.32; and for 1948 they will pay the City of Clewiston $1,074.77. This is based on 3.01 miles of main line and 1.80 miles of side tracks.

Q. Do these carriers contribute to the special levies for drainage and flood control work?

A. Only to a very limited extent in comparison with what we pay. Lake Okeechobee is subject to overflow. This is

what accounts for not only the high productivity of the soil, but also creates a hazard. The Federal Government has expended money in protecting the surrounding territory from the ravages of overflow from the lake. Special drainage district tax assessments are made against property owners for flood control work. The Sugar Company has had to assume, and does pay, a very substantial part of the drainage taxes in the area of this operation. This flood [fol. 597] control works to the benefit of the railroads who secure a vast tonnage of vegetable traffic from the Everglades area.

The matter of drainage tax which the Coast Line paid for the year 1947 was $3,508.28. The amount which the Sugar Company paid was $415,587.42.

At any rate, the total state, county and city taxes paid by the Atlantic Coast Line Railroad in this Everglades district is almost nominal. Our total tax bill for state, county, city and drainage purposes runs about $666,746.00 per year, which is paid by our company alone. The vegetable producers also contribute to the drainage taxes.

Q. Do those taxes include the taxes on your own 43.41 miles of railroad and your locomotives and equipment?

A. Yes.

Q. They do?

A. Yes.

Mr. Hillyer: We ask to receive this exhibit No. 155 in evidence.

Comm. Patterson: There being no objection, the same will be received for the record.

(Protestant's Exhibit No. 155, Witness Patterson, received in evidence.)

Mr. Hillyer: That concludes the direct.

By Mr. Pettijohn:

Q. Mr. Patterson, would you please turn to page 18 of your prepared statement?

[fol. 598] A. Yes.

Q. You show on there that allowing interest and depreciation and 10 percent for profit and taxes on income,—the

ten percent profit is a separate item after your income tax has been provided for, is it?

A. Yes.

Q. In other words, the ten percent does not include anything for income taxes?

A. No.

Q. Now on page 19 you say that the assessment has been practically doubled. Do you mean by that, assessment in Clewiston?

A. Yes.

Q. You don't mean that the state and county taxes have been doubled?

A. No, only access I have to those taxes,—I happen to be Mayor of Clewiston and as a matter of act, we protested as to the returns we received from the Comptroller. 3.01 miles of main line and 1.80 miles of side track which happen to be in the corporate limits of the city.

Q. There has been no increase in state and county taxes assessed at Tallahassee?

A. Not that I know of.

Mr. Pettijohn: That's all, thank you.

Comm. Patterson: Cross-examination?

[fol. 599] Cross-examination.

By Mr. Gwathmey:

Q. Mr. Patterson, will you be good enough to give me again your computed costs on a per ton basis for the Atlantic Coast Line and Florida East Coast for the 1946-47 and 1948-49 seasons, respectively? Didn't you give those figures?

A. Yes, I think so.

Q. '48-'49 I think you said 27.9 cents per ton, is that right?

A. Yes.

Q. What figure for the '47 season?

A. That is 27.9 cents per ton is our estimated amount of your cost. Cost of the carriers combined.

Q. For 1948-49?

A. Yes.

Q. I am asking you now if you have the corresponding figure for '47?

A. Yes, I am trying to locate that. That comes from that statement November 11, '47, to December 31, '47. The 94.41 cents per ton included 44.81 cents paid to the railroads.

Q. I am afraid you don't understand me, Mr. Patterson. I am asking for the computation of the cost per ton to Atlantic Coast Line and Florida East Coast combined for 1947 period. In other words, the figure which would correspond with your cost of 27.9 cents for the '48-'49 period.

[fol. 600] A. We didn't make that for the '46-'47 period

Q. Can you readily do that?

A. No, I couldn't.

Mr. Hillyer: You are speaking of the full season, 1946-47?

Mr. Gwathmey: Whatever period he used.

A. I can get that, I think.

Comm. Patterson: Will you furnish that later?

A. All right. It is a matter of locating the tonnage and computing it.

By Mr. Gwathmey:

Q. You showed for the 1946-47 season a total cost to the two railroads of approximately $400,000?

A. That's right.

Q. You did?

A. That is right, yes.

Q. Whereas, for the 1948-49 season you showed a total cost of about $254,000, did you not?

A. That's right.

Q. Was it,—what is the explanation of the difference?

A. Well, there is one explanation. And that is in the 1948-49 crop, it was a shorter period of proper days.

Q. Can you tell me approximately how many less cars you used in arriving at your $250,000 figure than you used in arriving at your $400,000 figure?

Mr. Hillyer: May I make an explanation?

[fol. 601] Mr. Gwathmey: I would like to have the witness explain it if he can.

Mr. Hillyer: To save a lot of time, you are talking about different things.

Mr. Gwathmey: If the witness doesn't understand the question, I will be glad to explain it to him. I'd like to have the witness answer rather than counsel.

A. You want the car numbers of '47-'47 crop compared with the '48-'49?

Q. You have a very wide divergence, Mr. Patterson, between your total cost for 1946-'47 as compared with total cost for '48-'49. You said that probably a shorter period was used in '48-'49.

A. That is one of the factors, yes.

Q. I am asking you how many cars did you use in computing your cost for the respective periods? That will enable you to make a comparison.

A. That is a matter I testified to, but I haven't that in my mind.

Mr. Hillyer: May I confer with counsel privately and——

Mr. Gwathmey: I don't care to have Mr. Hillyer explain anything. If he doesn't care to or can't, he can say so. Counsel doesn't want him to——

Mr. Hillyer: He can answer it if it is asked in the right way.

Mr. Gwathmey: I have n't heard any objection to the way [fol. 602] it was asked.

Mr. Hillyer: Go ahead, but you are wasting time because you are talking about different things.

Comm. Patterson: Let that information be furnished later. There isn't any use of setting up a clerical office here.

A. It is a matter of getting the cars and tons of the '46-'47 season and the '48-'49 season.

Comm. Patterson: You can furnish that later on.

By Mr. Gwathmey:

Q. I will pass that then, Mr. Patterson. You spoke of certain land having been donated to the Florida East Coast and the Atlantic Coast Line by the United States Sugar Corporation. Was that land donated by the United States Sugar Corporation or given by the Southern Sugar Corporation, which was predecessor?

A. Partly by the predecessor corporation and then they did not complete it. There were a few items they weren't able to acquire at the time, and since then the United States Sugar Corporation have completed those purchases an- they are complete with the exception of one very, very small

parcel which is title clouded in some manner and we haven't been able to acquire title to it yet.

Q. When was the land originally donated, the first part of it?

A. In about, as I remember it, we were active in the pur-[fol. 603] chase of that right *a* way somewhere around '29.

Q. 1929?

A. Yes, sir.

Q. I understood you to say another witness will explain the details of this exhibit which has been identified as number 156, is that correct?

A. Yes.

Q. I have one or two more questions to ask you then. Am I correct in understanding along the lines of the Coast Line and the Seaboard—I meant the East Coast instead of the Seaboard—extended eastwardly from Moore Haven through Clewiston to Lake Harbor and then the East Coast beyond. The cane is loaded at quite a large number of different loading sidings or loading points? That is correct, is it not?

A. That is correct, yes.

Q. And those points are scattered practically all along that line, are they not, Mr. Patterson?

A. Yes.

Mr. Gwathmey: Mr. Commissioner, if you care to have me do it and with counsel's leave, I will lay before you a map I am going to introduce. I will lay it before you so you can follow.

Comm. Patterson: It is *is* a straight line map——

Mr. Gwathmey: We are going to introduce that.

Mr. Hillyer: I will be glad for him to have it.

[fol. 604] By Mr. Gwathmey:

Q. In the operations of the railroads' train along this line for setting off empty cars and picking up loaded cars, do you not require them to maintain a very exact schedule?

A. Yes.

Q. If they fail to do that, what would be the effect?

A. If they failed to meet their schedules, why some time they get the operation pretty badly balled up because the loading time of the labor to load the cars is pretty well

established and if the trains are late then, of course, they lose the loading capacity of that time and then that throws out the number of cars that are to be spotted at that particular siding at that particular hour. And therefore, when your train arrives and is late, there may not be sufficient space in the siding to place your cars for the contemplated loading for that day.

Q. Your hoists, as you call them, would be held up?

A. Yes, that is right.

Q. So that the railroads must necessarily maintain a very exact schedule along these loading points?

A. Yes, on the Florida East Coast, I think the cane trains are on their schedules, on the time table.

Q. Does your company pay your train and maintenance employees on the same basis or scale which the railroads pay?

A. Well, very closely. That's trainmen you mean?

[fol. 605] Q. Train and maintenance employees.

A. Maintenance employees are not paid on the same scale as yours and our foreman costs about eight dollars a day.

Q. Your scale is lower than the railroad scale?

A. A little lower, especially on the common labor.

Q. On the round trip between Lake Harbor and Canal Point how many hours are the crews of the railroad on duty, do you know?

A. No, I wouldn't know. I don't know what their round trip is there.

Q. It probably takes them less than five hours to make that round trip?

A. I'd say about five hours would be a good guess at it.

Q. Do they have to be paid for nine hours' work?

A. You make several trips to Canal Point, several round trips to Canal Point during the day.

Q. Do you know whether all of the crews make more than one round trip or whether frequently they make only one trip, round trip a day?

A. I don't know exactly how the Florida East Coast crews are employed during the day and how they are paid.

Q. The question as to the number of round trips made and the time consumed in making such round trips would enter very largely, importantly, into the cost?

A. I understand that, yes.

Mr. Gwathmey: Would you indulge me just a minute, [fol. 606] please? The gentlemen tell me they have some questions they want me to ask.

Comm. Patterson: Off the record.

(Discussion off the record.)

Comm. Patterson: On the record.

By Mr. Gwathmey:

Q. Mr. Patterson, Mr. Hicks tells me to my surprise, a good ideal of cane is grown in the Clewiston town, town site?

A. Yes, there is some in Clewiston town site proper.

Q. Have you included that town site cane in your computation of the railroads' cost?

A. No, sir, the railroads have nothing to do with that. We place the sugar trains there with our switch engines and take it away.

By Comm. Patterson:

Q. While you are waiting to get ready for the questions of Mr. Gwathmey, do I understand that this, all this area beyond Canal Point is on your own property?

A. That is beyond this interchange point here, all this property is our own property, is contiguous and that is our own railroad and——

Q. I understand that.

By Exam. Mattingly:

Q. I am afraid the way that is going in the record that is not going to mean a lot. This map is not in the record.

Comm. Patterson: It is easy enough to identify it in the [fol. 607] record. All the property beyond the interchange point at Canal Point, is your own property?

A. Yes, sir, and our own track.

Q. I understand that. Everything is your own property and you assemble this stuff and deliver it to the railroad company at Canal Point?

A. Yes, sir.

Q. They haul it to Lake Harbor where they interchange it with another railroad that hauls it to Clewiston?

A. Yes, sir.

Q. And all the property beyond there, your interchange track at Clewiston, is that correct?

A. Yes.

Q. And the carriers between Canal Point and Lake Harbor to Clewiston, you regard them as intermediate carriers?

A. Yes.

Q. What is your arrangement with respect to the pay for that service? Do you get a portion of the through rate or is it handled some other way?

A. We pay on a scale and it is a five-mill interval, a stated particular amount from each loading hoist.

Q. I see, but that doesn't include anything beyond Canal Point or beyond the interchange track at Canal Point or Clewiston?

A. No. There is a tariff, interstate tariff published that [fol. 608] gives the mileage from each hoist to Clewiston and with the tariff charges per ton.

Q. And you pay the line haul carriers here two cents a mile for use of your cars?

A. They pay us.

Q. I mean they pay you two cents a mile for the use of your cars.

A. The loaded directions.

Q. How about empty?

A. No, they made that loaded direction for simplicity of accounting.

Q. How much do those cars cost?

A. About; well they cost us about sixteen hundred; sixteen or eighteen hundred dollars.

Q. That is a pretty liberal allowance for a sixteen hundred dollar car, isn't is, two cents a mile?

A. No, I wouldn't think so.

Q. Do you know what they pay for tank cars that cost four thousand dollars?

A. I don't in our case think it is a liberal payment for this reason: we operate seasonally. All right, our crop is somewhere around 180 days. And so those cars,—we have to thoroughly maintain them during the summer time so that there is no chance of our,—very little chance of our losing the use of a car per day for any day during that crop period

and therefore, we have to be more careful in the mainte-
[fol. 609] nance of those cars than the average car on a railroad.

Q. Are you familiar with the order of the Interstate Commerce Commission requiring all freight cars to be equipped with an air brake of certain specification?

A. Yes.

Q. While on the maintenance question——

A. Yes.

Q. Have you equipped your cars according to that order?

A. Our cars are not in interchange.

Q. They are handled by a common carrier engaged in interstate commerce?

A. Yes.

Q. They would be, if they handle those cars?

A. That would be subject to the Interstate Commerce Commission.

Q. You already have that ruling.

A. But I don't believe our cars are in interchange.

By Exam. Mattingly:

Q. Doesn't the East Coast interchange with the Coast Line or vice-versa?

A. They go through no formality.

By Comm. Patterson:

Q. But they do interchange?

A. Yes.

Q. I was wondering how good a job——

A. We haven't put the brakes on.

Q. Do you intend to before the first of the year?

A. I don't know whether there is any appropriations now,
[fol. 610] but we would expect to see whether or not our cars are in interchange.

Redirect examination.

By Mr. Hillyer:

Q. Mr. Patterson, none of those cars move interstate?

A. No.

Commissioner Patterson: That law doesn't run against interstate or intrastate, it runs against any carrier that the carrier itself is engaged in interstate commerce. I don't think there is any question about the Florida East Coast or the Atlantic Coast Line being engaged in interstate commerce.

Mr. Hillyer: I was afraid you had gotten the impression some of these cars got out of that area into general use.

Comm. Patterson: No.

Mr. Gwathmey: We have no further questions.

By Mr. Hillyer:

Q. Mr. Patterson, you gave a figure of 27.9 cents per ton for the 1948-'49 season and the total cost there as $254,904.93. Does that figure appear on exhibit No. 156 near the bottom of the page on page 4? As the total operating expenses?

A. Yes. I had the 2654, but the 27.9 cents is not on that sheet.

Q. Now, you gave a figure for 1948,—excuse me, for 1946-47 including profit and taxes on income, that is ten percent profit of $409,000. Do you recall that for the [fol. 611] 1946-47 season?

A. Yes.

Q. Now, does this figure of $254,000 for 1948-49 include the ten percent profit and taxes on income?

A. I do not think it does include the ten percent taxes on income.

Q. The $209,000 included everything and the $250,000 includes only the total operating expenses?

A. I think so.

Mr. Hillyer: Does that explain what you wanted to know?

By Mr. Gwathmey:

Q. Why did you use a different basis for computation in the two seasons?

Mr. Hillyer: Well, the next witness is going to explain the 156.

Comm. Patterson: Anything more?

Mr. Gwathmey: No.

Comm. Patterson: You are excused.

(Witness excused.)

OTIS A. JONES was sworn and testified as follows:

Direct examination.

By Mr. Hillyer:

Q. State your name, address and occupation?

A. My name is Otis A. Jones. I am Assistant Secretary and Assistant Treasurer of the United States Sugar Corpo- [fol 612] ration. I live in Clewiston, Florida.

Q. Was your title with this company?

A. Yes, Assistant Secretary and Assistant Treasurer.

Q. What department of business comes under your daily supervision?

A. General accounting.

Q. Your division keeps the accounts?

A. Strictly accounting.

Q. The records which were used by Mr. Patterson in the testimony which he has presented were kept by that department?

A. Yes.

Q. And are the traffic statistics kept by another department under the supervision of Mr. Cecil Jones?

A. Yes.

Q. Did you work with Mr. Patterson and Mr. Cecil Jones in the preparation of the studies for the Florida case which we mentioned?

A. Yes.

Q. Were the underlying accounting figures taken by Mr. Patterson from the records and in working in conjunction with you when those studies were made up for the Florida case before the Florida Commission?

A. Yes, sir.

Q. Has that same method been used in the preparation of the study marked as Exhibit 156 which will be presented [fol. 613] by Mr. Young?

A. Generally speaking, yes, although the exhibit which has been identified as 156 does not include all of the calculations which were included in the schedules presented in the Florida Commission case.

Q. That will be explained by Mr. Young?

A. That will.

Q. Are there any other sugar operations in the state other than United States Sugar Corporation?

A. There are two other sugar mills in Florida. One of them is located about one hundred miles south of Daytona Beach, near the East Coast of Florida, at or near Sebastian, Florida. There is another——

Q. Just a moment. Will you point that out on the map?

A. There is another relatively new sugar mill about eight miles south of South Bay, Florida, which has been in operation for the past two seasons.

Q. And what is the name of that?

A. Okeelanta.

Q. Okeelanta?

A. Yes, sir. The Okeelanta Cooperative Sugar Growers, I believe is the name of the plantation out there.

Q. Is there any rail service at the Fellsmere, near Sebastian?

A. I believe they have a track that runs from the Florida East Coast down to their plant.

[fol. 614] Q. Do you know whether they use rail for their sugar cane movement into the mill, or not?

A. They do not.

Q. Are there any railroad tracks serving the plant at Okeelanta?

A. Not at present.

Q. Have they started building a line?

A. I understand that the Atlantic Coast Line Company is building a line to Okeelanta.

Q. How does Okeelanta bring in its sugar cane?

A. By truck or athey wagon.

Q. Will you explain what that is?

A. An ordinary large farm wagon with a caterpillar on the rear instead of wheels on both sides.

Q. Is any rail service available for outbound products of Okeelanta mills?

A. Not at the present.

Q. Have they shipped out in the past? That's operated for some time?

A. That is the mill that's been in operation for the past two seasons, yes and they have shipped out in the past by truck.

Q. Has your company any connection with either of those mills at Fellsmere or Okeelanta?

A. No.

Q. Do any of the three mills, yours or those two, draw [fol. 615] in any sugar cane from any other state?

A. No.

Q. Is any sugar cane shipped from any of these three mills in interstate commerce to interstate points? I am speaking of sugar cane?

A. No, no sugarcane moves in interstate commerce out of Florida unless it could be said that occasionally when we ship small express shipments out of the state for laboratory purposes and I do not consider that as interstate commerce.

Q. Is that shipped for sale or is that a gift?

A. Usually it is either given or sent for test purposes and, of course, it isn't returned.

Q. Where do you send that by express?

A. I think on one or two occasions it was sent to a laboratory in New York.

Q. About how did that weight come to?

A. Less than 100 pounds.

Q. Do you know of any other interstate movements of sugar cane in or out of Florida?

A. I do not.

Q. Now, in your business do you ship your outbound products to interstate destinations?

A. Interstate, *yes*.

Q. And the general increases in rates has been paid on [fol. 616] those outbound interstate shipments?

A. They have.

Q. After the raw sugar is refined at Savannah, must it be reshipped again to the consumers?

A. Yes.

Q. Is your business run on an easy margin of profit?

A. The sugar industry generally is a large volume, low

cost, narrow margin industry, narrow profit margin industry.

Q. Do you just rock along complacently in connection with cost in the operation of your plant?

A. We are making studies all of the time and we have to continue to make them in an effort to try to stay in business.

Q. Are there any hazards in the sugar cane business with respect to weather or seasons or temperatures?

A. The sugar cane business is hazardous in that the area in which we operate has hurricanes, and for the past two years we have had some rather high water in that area at times, and quite frequently we have freezes before we have taken the crop off.

Mr. Hillyer: That concludes the direct examination of this witness.

Comm. Patterson: Cross-examination?

Cross-examination.

By Mr. Gwathmey:

Q. Mr. Jones, do the operators at Fellsmere and Okeelanta ship raw sugar?

[fol. 617] A. I don't believe so, Mr. Gwathmey.

Q. Are they manufacturers and producers of refined sugar?

A. They make a finished product normally known as white sugar.

Q. Does the sugar Corporation at Clewiston ship any sugar except in the normal form of raw sugar?

A. They do not.

Q. And the entire output goes to Port Wentworth, Georgia, does it?

A. Correct.

Q. Does the Sugar Corporation both own land and produce sugar cane and buy sugar cane from other producers?

A. They do.

Mr. Gwathmey: That's all.

Comm. Patterson: You are excused.

(Witness excused.)

Comm. Patterson: We will take a recess.

(Recess had.)

Comm. Patterson: All right, Mr. Hillyer.
Mr. Hillyer: Mr. Cecil Jones.

CECIL JONES was sworn and testified as follows:

Direct examination.

By Mr. Hillyer:

Q. Will you state your name, address and occupation?
A. Cecil Jones, Supervisor of Traffic and Tariffs, United [fol. 618] States Sugar Corporation, Clewiston, Florida.
Q. Describe briefly your experience in transportation and traffic?
A. Since 1923, Atlantic Coast Line and United States Sugar Corporation. You asked for the experience, didn't you?
A. Yes.
A. I said since 1923, ten years with the Atlantic Coast Line and the remainder with the United States Sugar Corporation.
Q. Describe the nature of your duties with the United States Sugar Corporation?
A. Supervisor of operation of cane trains, of interchange with the Atlantic Coast Line, of U. S. Sugar switching crews, employment of railroad personnel, distribution of cane cars, direction of traffic, overcharge, loss and damage.

Mr. Gwathmey: This witness is reading from a prepared statement. We have undertaken to give the other side copies of testimony when we put it in.
Mr. Hillyer: Those are just the barest kind of notes.

By Mr. Hillyer:

Q. How is the weighing of your freight performed and by whom?
A. On our own track scales.

Q. Where are they located?

A. Mill yard at Clewiston.

Q. How are the cars taken to the scales?

A. They are shoved by Sugar Corporation engines to the [fol. 619] dump track and handled on to the scale by steam winch.

Q. And who does the weighing?

A. Sugar Corporation employees.

Q. Is all of that weighing service performed at the expense of the Sugar Corporation?

A. It is.

Q. Under the supervision of the Southern Weighing and Inspecition Bureau?

A. Yes, sir.

Q. Do you have to pay for his time?

A. Well, the employees, the person who does the weighing is an employee of the Sugar Corporation but all records are checked by the Bureau.

Q. Do you pay the entire expenses of switching and loading the freight?

A. We do.

Q. I made a mistake, switching and weighing of loaded cars of cane?

A. That is *ture*.

Q. Do you also weigh the outbound cars?

A. Yes, sir.

Q. Of your products?

A. Yes, sir.

Q. Will you describe briefly the method of bringing the sugar cane into your mill from the standpoint of physical [fol. 620] operation?

A. It is brought in by Atlantic Coast Line in trains. They come into our yard and cut the engine off, take the caboose off, and go to their yard and tie up.

Q. About how many cars are in those trains?

A. It carries anywhere from 60 to 115.

Q. Are those yard tracks, what we might call interchange tracks, on your plant property?

A. They are on plant property, yes.

Q. How many of those yard tracks do you have?

A. A total of 13 are used.

Q. What capacity are those tracks?
A. They range from 38 to 115?

By Comm. Patterson:

Q. What? Cars?
A. Yes.

By Mr. Hillyer:

Q. How many are the shorter tracks?
A. Ten.
Q. How many are the longer tracks?
A. 3.
Q. How many cars do the three of the longer hold?
A. It ranges from 97 to 115.
Q. Are any of those stub end?
A. No, sir.

Q. Could an engine headed into your plant or yard tracks go all the way around and make a circle without having to switch back to a wye?

[fol. 621] A. Definitely, they can circle entirely around the mill.

Q. Now, on the inbound cane, you mentioned Coast Line's movement. How many of those are separated betw3een those that come from the Florida East Coast and those that come from the west on the Coast Line?

A. Yes, they are separated.

Q. They are brought in separatedly by the Coast Line?
A. That is correct.

Q. What kind of crew brings them into your yard tracks?
A. Road haul crew.

Q. Are any switchengine crews used by the Atlantic Coast Line at Clewiston in connection with your sugar cane?

A. No, sir.

Q. Now, let's describe the method of taking out the empties from your plant at Clewiston.

A. A Coast Line engine comes in the yard, places the caboose on the empties, goes to the other end of the same track, couples the engine and leaves.

Q. Is this train coupled for them?

A. It is coupled but the air holes are not—all coupling is done for them.

By Comm. Patterson:

Q. That is done automatically?

A. Yes, sir, except you've got to be certain that you don't kick them in with closed knuckles.

Mr. Gwathmey: Would you read that last answer?

[fol. 622] (The last answer was read by the reporter.)

By Comm. Patterson:

Q. I thought those couplers all had throwers on them. Do your cars have the type of coupler?

A. Standard coupler, but you can throw plenty together in a switch and it wouldn't necessarily couple, unless your draw heads are set right.

By Mr. Hillyer:

Q. Are those empty cars placed on these series of yard tracks in strings before the Coast Line train comes to get them?

A. They are complete when the Coast Line comes to get them, yes.

Q. What kind of Coast Line crew takes the empties out of the yard?

A. Local road haul.

Q. Is any switching crew used by the Coast Line on your out-bound empty trains?

A. No.

Q. Now, what does the Coast Line do with these empties that are assigned for the Florida East Coast section to the right as compared with the Coast Line to the west?

A. You mean is the movement of the outbound train different?

Q. Yes, what happens?

A. The Atlantic Coast Line takes the empties to Lake Harbor and——

Q. That is for the Florida East Coast?

[fol. 623] A. Yes. Westbound trains they back out of

the yard and they head to the west end, run of course, in the reverse of that.

Q. Do they have to make a separation as to which go to the Florida East Coast and which go to their own line?

A. No, sir. They are made up separately in the yard.

Q. Is that all done by you and under your direction?

A. It is.

Q. Does the Florida East Coast at Canal Point use any switch engines or switching crews to go into your series of tracks there?

A. No, sir, road haul.

Q. What is the form of the delivery by you to the Florida East Coast?

A. We deliver to the them,—deliver the cane to them in cuts of 60 to 70 cars in a designated place and they attach the caboose and engine and leave. That is all there is to it.

Q. Does the Florida East Coast use any separate switching crew in Canal Point?

A. No, sir.

Q. Either on empties or in loading out,—in loads going out?

A. Neither.

Q. Do they employ any separate switching crew for your cane traffic anywhere between Canal Point and Clewiston, either of the lines?

[fol. 624] A. No, sir, no switching crews at all.

Q. Is there expedited service required for your empty or your loads?

A. Not expedited excepting they should be run on reasonably accurate schedules.

Q. Do they have a schedule? For these trains?

A. Yes, they do.

Q. Is that of any convenience to the carriers?

A. In the case of the Florida East Coast, it is more convenient than the Coast Line?

Q. Why?

A. They save certain expenses by making it a time card movement.

Q. Have you heard the testimony of Mr. Patterson?

A. Yes, sir.

Q. Did you furnish to him the figures and the data with respect to the traffic and the traffic units and the wages?

A. No, not the wages.

Q. The traffic units?

A. Yes, sir, I did parts of it.

Q. Were the other parts furnished by Mr. Otis Jones?

A. They were.

Q. Were those cost sheets figures compiled by the three departments working together?

A. Yes, sir.

[fol. 625] Q. Were the figures that you have given to Mr. Patterson for those studies made from the actual records which are kept under your supervision?

A. They were.

Q. Will you describe briefly the way in which your present rates on sugar cane to Clewiston are published and the tariff provisions which are applicable in connection with your rates?

A. Our rates on sugar cane are published by the Atlantic Coast Line and the Florida East Coast in Atlantic Coast Line Railroad Freight Tariff No. 91-50A, effective October 22, 1942, with supplements and amendments thereto, and reissues thereof.

The rates are published under a mileage scale beginning with five miles and under at 30 cents per ton, and extending up to the 40 mile and over 30 mile block, 65 cents per ton.

Q. Now, are there any tariff provisions that are applicable to this cane movement which are not found in ordinary local tariffs?

A. Yes, they are. Item one provides that the consignee at Clewiston shall ship over the lines of the Coast Line via Palmdale and Haines City, and amount of unrefined sugar and blackstrap molasses or derivatives therefrom equal to that extracted at the sugar house from a tonnage of sugar cane delivered to it over the lines of the Florida East Coast Railway Company and the Atlantic Coast Line Rail-[fol. 626] road Company. There is an exception under this under which a portion of the tonnage would have to go out over the Florida East Coast, equal to the sugar extracted from the sugar cane loaded by the consignee on the lines of the Florida East Coast.

Item two provides that the amount of the sugar content and the molasses to be shipped shall be determined by separate laboratory tests to be produced from each ton of cane received at the sugar house.

Q. How often are the railroads furnished with a report under item two?

A. Each three weeks.

Q. What does Item three provide?

A. Item three provides that the consignee may reserve for its own use or for local sale an amount of blackstrap not to exceed 500,000 gallons from each harvest season. If the proportionate amount of sugar and blackstrap is not shipped within an 18-month's period from the date of inbound movement, then the tariff provides in item four that the normal tariff rates on sugar cane shall be charged.

Item five provided that the charges shall be paid at the end of the month.

Q. Have you had any difficulty in complying with that provision of all your shipments of molasses moved out within the required time?

A. They have.

[fol. 627] Q. Do you have to keep any accounting though to be sure that is complied with?

A. Considerable.

Q. Now, as to the payment of the freight charges, is there a special time for the payment of freight charges?

A. Yes, sir, at the end of each month.

Q. Is that a convenience to you and to the carriers?

A. It certainly is to us to pay it only once a month.

Q. Is all that accounting down in your office under your direction?

A. It is.

Q. Now, Mr. Patterson has already explained that the allowance for the two cents per mile is for the loaded movement. Is that in the tariff itself as item 6?

A. Yes, sir, it is.

Q. Now, is any considerable amount of time and clerical expense required in complying with these transit provisions?

A. Quite a good bit. A complete set of distribution records have to be kept so as to separate the Florida East Coast and the Atlantic Coast Line and products.

Q. Because of that do you have to route outbound traffic over different lines?

A. We have to route the outbound traffic in the same proportion as the inbound cane.

Q. What two routes does your raw sugar take under this [fol. 628] tariff and transit provision?

A. One route Atlantic Coast Line to Savannah, S&A.

Q. What is the other route?

A. Coast Line to Lake Harbor, Florida East Coast to Jacksonville, Coast Line to Savannah, S&A.

Q. Do you have to separate your outbound routing over these to one going to the Florida East Coast and the other Coast Line?

A. Right.

Q. Is that separation made in making up the trains or the cuts for the outbound movement?

A. It is placed on the interchange track so as to make no switching for the carrier.

Q. Under that transit provision, are you required then to ship a certain definite number of cars over the Florida East Coast route and a certain number of cars over the Atlantic Coast Line?

A. I wouldn't put it a certain number of cars, but very definitely a number of pounds. It is the same answer.

Q. Where is the preponderance of the tonnage of sugar cane produced?

A. On the Florida East Coast rails.

Q. And therefore your outbound routing must be in that proportion over the Florida East Coast route?

A. That is right. Roughly two-thirds.

[fol. 629] Q. Does the calculation and the clerical expense of that routing take any considerable part of your time or your assistants'?

A. It certainly does. You handle it twice. Inbound and outbound.

Q. Have any changes been proposed in that intrastate tariff in your sugar cane tariff?

A. Yes, the railroads recently proposed to restrict the tariff to apply only in connection with the outbound sugar destined to points in Florida in intrastate traffic.

Q. Do you have any such intrastate outbound movement?

A. No, all of our outbound raw sugar goes to Port Wentworth, Georgia.

Q. Would there be any place you could use on raw sugar?

A. No, only molasses.

Q. Now you have molasses shipments both interstate and intrastate?

A. Yes, sir.

Q. On the molasses, would that restriction have application on your outbound molasses to intrastate points?

A. You could use it on intrastate points, but intrastate movement is a small proportion of our total movement.

Q. That is of molasses?

A. That is right.

[fol. 630] Q. And on raw sugar you have not?

A. None.

Q. Have you resisted that change in the Florida Sugar Cane tariff?

A. Yes, we have filed a complaint with the Railroad Commission of Florida opposing that change. That complaint is pending and has not yet been heard.

Q. Was any other change proposed by the carriers?

A. Yes, they proposed to put in an interstate transit tariff on sugar cane subject to many conditions which would be burdensome and bothersome to us and which would result in increases in the present charges on sugar cane by amounts ranging from 43 percent to 48 percent, and not including the recent increase of six percent under Ex Parte 168, which became effective on interstate traffic in January, 1949.

Q. Has that tariff been subject to any additional increases which might be permitted in the general revenue cases before the ICC?

A. It would, yes, sir.

Q. Did you oppose that tariff?

A. Yes, we filed petition for suspension and investigation of Atlantic Coast Line Tariff B-3219, issued March 3, 1949, effective April 13, 1949.

Q. What tariff Number?

A. ACL Tariff B-3219, issued March 3, 1949, effective [fol. 631] April 13, 1949.

Q. What did the Interstate Commerce Commission do with your protest?

A. The Interstate Commerce Commission suspended the new transit sugar cane tariff and assigned the case for hearing today.

Q. Are the transit provisions of that tariff similar in any respects to the transit provisions in the present Florida Sugar Cane Tariff?

A. In many respects, not entirely.

Q. Are there additional requirements in this interstate sugar cane tariff which has been suspended?

A. Several.

Q. Does it require furnishing a bond?

A. Yes, sir.

Q. Have you ever had to do that before? In connection with any traffic?

A. Not under the present intrastate tariff.

Q. Is your company willing to furnish such a bond?

A. They prefer not to do it. They don't want to.

Q. Those transit tariffs provide you would have to make application for the use of that car tariff?

A. They do.

Q. Have you at this time any intention of making any such application?

[fol. 632] A. No, sir.

Q. What does that tariff provide with respect to payments of freight charges?

A. The freight charges would be paid each 96 hours. That would entail a world of work through the accounting department because in effect, you'd be paying bills every month, when you pay them once a month as provided in the present tariff.

Q. The present Florida tariff?

A. Yes.

Q. Has there ever been any difficulty of any kind between you and the carriers with respect to prompt payment of your bills?

A. No, not to my knowledge, no, sir.

Q. Have you studied that interstate transit tariff?

A. I have read it several times.

Q. In your opinion, would a great deal of trouble be caused which is not occasioned by the present Florida tariff?

A. Yes, sir, considerable more work in that than the present.

Q. Has there ever any disposition on your part to refuse to bill your outbound traffic over the Coast Line route or the Florida East Coast route in relation to the inbound and incoming tonnage of cane?

A. Never one particle of trouble.

Q. You are quite willing to do that without any tariff provision?

[fol. 633] A. We always have done it.

Q. Has any other recent change occurred in the sugar cane tariff on file with the Florida Commission?

A. Last fall the carriers failed to renew the carload minimum weight provisions on sugar cane of 36,000 pounds up to December 31, and 38,000 pounds from January 1 to June 1. By reason of their failure to publish those seasonal minima the railroads are demanding charges on basis of a minimum of 40,000 pounds up to January 31st and 44,000 pounds after January 31st.

Q. Have you been able to load the require minimum?

A. No, we tried hard to do it. We loaded the cane way up above the top of the racks on the cane cars and we lost a lot of cane because it joggled off along the journey and scattered all over the right of way on the railroads' tracks and our tracks, and still we were unable to load the required minimum.

Mr. Hillyer: Off the record.

(Comm. Patterson: Off the record.)

(Discussion off the record.)

Comm. Patterson: On the record.

By Mr. Hillyer:

Q. Have you been making the calculations to show how much weight you paid on which you were unable to ship under these minima?

A. Our records show that, yes.

[fol. 634] Q. Do those payments run into a considerable sum of money, Mr. Jones?

A. They do.

Q. What have you done about that recent change in your Florida tariff?

A. We filed a complaint with the Railroad Commission of Florida alleging that the carload minima were unreasonable and more than could be properly and safely loaded. That case is still pending.

Q. To what extent did this cane spill off the cars? Was it necessary to go out and clean up the tracks?

A. Section forces of both railroads constantly move spilled cane off of the right of way. It is necessary because of the quantity.

Q. Did that occur after this increase in the carload minimum?

A. It was a greater extent of spill at that time than before because we brought the load higher in an effort to get in more weight.

Q. This interstate which has been suspended, would that tie in outbound rates to Port Wentworth?

A. It would.

Q. What has been your position with respect to those outbound rates on raw sugar?

A. Our position has been that our rates on raw sugar to Port Wentworth are unreasonably high. We have done [fol. 635] what we could to get a reduction in those rates considered in and of themselves and aside from the rates on sugar cane.

Q. Do you want those outbound raw sugar rates tied in with your sugar cane rates?

A. No, sir.

Q. You want to pay reasonably priced rates on both movements separately?

A. That's right, they have no relation to each other.

Q. What did you do about these raw sugar rates?

A. After the railroads failed to do anything about it we filed a complaint with the Interstate Commerce Commission. The case was heard before Examiner Alldredge in January at St. Petersburg, Florida. A Proposed Report of Examiner Russell was issued in June, 1949, holding that our rates on raw sugar, outbound, considered separately and apart from the inbound rates on sugar cane are and for the future will be unjust and unreasonable. He recommends a substantial reduction.

By Mr. Gwathmey:

Q. How much?

A. I don't have the figures, Mr. Gwathmey. I couldn't tell you.

By Mr. Hillyer:

Q. Mr. Jones, in the making up of the cost study of Mr. Patterson and that which will be discussed more, but did you furnish the rates of pay of the crews of the Florida East Coast and the Coast Line?

[fol. 636] A. Yes, sir.

Q. And doing that did you use the wages of your own crews or those which are paid by the trunk line carriers to their crews?

A. The wages paid by the carriers as told to me by their employees for in-train service.

Q. Are you in touch with them every day?

A. See them whenever I want to. There are always some around.

Mr. Hillyer: That's all.

By Mr. Pettijohn:

Q. Two questions please. Did I understand you to say that you were not permitted to ship molasses intrastate from your Clewiston plant by truck?

A. We have a li/mitation as to what we can ship, yes, sir.

Q. And are you required to handled your raw sugar that is originally shipped over the East Coast north from Jacksonville via the Atlantic Coast Line?

A. Yes.

Q. You can't ship by the Seaboard?

A. The only route that can apply is the Atlantic Coast Line.

Mr. Pettijohn: Thank you.

Mr. Gwathmey: Mr. Commissioner, an exhibit has been produced here and identified as exhibit No. 156. Several witnesses have referred to it, but I don't understand it has [fol. 637] yet been offered in evidence?

Comm. Patterson: It has not. It is identified here to be submitted by another witness. Witness Young. He hasn't appeared yet.

Mr. Hillyer: He will be next. Mr. Otis Jones, Mr. Cecil Jones and Mr. Patterson have been laying a foundation for it, showing where he got the information and the men who have the facts and who worked with him in the preparation and study of it.

Mr. Gwathmey: You have still another witness who is going to explain this exhibit No. 156?

Mr. Hillyer: Yes.

Mr. Gwathmey: All right.

Mr. Hillyer: And that will conclude the cane testimony we have. We have as our next witness——

Mr. Gwathmey: Just a minute. I would like to cross examine this witness.

Cross-examination.

By Mr. Gwathmey:

Q. Mr. Jones, you mentioned the wages paid to the crews by the Coast Line and Seaboard as told to you. Will you say what wages your company pays your own crews? What rate of pay?

A. Express percentage, which is roughly eighty percent of standard.

Q. 80 percent of standard?

[fol. 638] A. Yes, sir.

Q. I used the word "Seaboard" inadvertently. I should have said Coast Line and Florida East Coast.

That is all I want to ask.

By Comm. Patterson:

Q. Mr. Jones, you testified that these sugar trains come in solid trains on the Atlantic Coast Line and Florida East Coast into the plant?

A. Not on the Florida East Coast, on the Atlantic Coast Line only?

Q. Atlantic Coast Line in solid trains?

A. Yes, sir.

Q. Are the schedules of those trains that they are run on pretty close schedules?

A. Yes, sometimes it varies as much as two hours a day to fit the need.

Q. Is that schedule made at the general convenience of the industry?

A. It is worked out, Mr. Commissioner, between the industry and us to fit our needs and the schedules of their trains. That is what it really is.

Q. You testified that the trains were made up solid for the Atlantic Coast Line?

A. Only movement out of the plant is Atlantic Coast Line.

Q. And the trains are made up solid for the Atlantic Coast line? The air holes are not coupled?

[fol. 639] A. That is correct.

Q. How do you know the brakes will work?

A. The Atlantic Coast Line conductor has that responsibility.

Q. He does for that extent prepare the train for movement?

A. He couples the holes and tests the brakes before he leaves.

Comm. Patterson: That is all.

(Witness excused.)

PAUL L. YOUNG was sworn and testified as follows:

Direct examintion.

By Mr. Hillyer:

Q. Will you state your name, address and occupation?

A. Paul L. Young, 3934 University Boulevard, Houston, Texas. Accountant.

By Mr. Gwathmey:

Q. Houston, Texas, did you say?

A. Yes, sir.

By Mr. Hillyer:

Q. Mr. Young, will you describe your training and experience in accounting and cost accounting statistical work?

A. Well, I have been in the railroad for 23 years and 18 of these were in special assignment work, cost study, special investigations, and in the Southwest for the Missouri-Pacific Line. Made terminal costs, line haul costs, handled special investigations for the various departments of [fol. 640] the railroads for presentation to the Interstate Commerce Commission, the State Commission, and for the Management. We make costs, that is, comparative costs for rail transportation, water transportation, truck transportation, barge lines, and we made studies for the federal coordinator of transportation for the Southwestern region, supervised the entire cost studies that the Federal Coordinator required out of the Southwestern region.

During the war I was on loan to the Office of Defense Transportation and that was for a period of about two years, two and a half years.

Q. In the course of your duties has it been necessary to acquaint yourself with all of the more recent cost accounting methods of cost section of the Interstate Commerce Commission?

A. Yes, sir.

Q. Have you worked from time to time with the Cost Section on these various and sundry assignments which you had had?

A. Yes, sir.

Q. Have you been to Clewiston, Florida?

A. Yes, sir, I have.

Q. Have you made a study of the operations of sugar cane trains into Clewiston?

A. Yes, sir.

Q. Did you assemble data for Mr. R. Y. Patterson, Mr. Cecil Jones and Mr. Otis Jones in your study?

[fol. 641] A. I did.

Q. Did they work constantly and continuously with you in the preparation of studies for this case?

A. Yes, sir, they did.

Q. Did you go over the testimony which Mr. Patterson has presented before the Florida Commission and which

he referred to this morning and which are shown in Exhibit 155?

A. Yes, sir, I did.

Q. Exhibit 155 shows an average cost per ton for a certain period and then Mr. Patterson gave the total expenses including profit for the season 1946-'47. You were not employed by the Sugar Company at that time, were you?

A. No, sir.

Q. Have you been over those figures with him?

A. Beg pardon?

Q. Have you been over those figures with him?

A. I have, yes, sir, I have looked them over.

Q. Now, in his computation cost for the season, about $409,000, he concluded, as he said, ten per cent for profit and taxes on income, etc.

A. Yes, sir, and depreciation was included in that, too.

Q. In your studies were you willing to make that kind or use that kind of a factor?

A. No, sir.

[fol. 642] Q. In assembling your cost?

A. No, sir, I was not.

Q. So there is that difference between his total cost and the cost without those items in your study?

A. Yes, sir.

Q. Do you know *how* the cost computed by Mr. Patterson for 1946-47 season, excluding these items of interest, depreciation, and ten per cent profit, compared with your costs?

A. You mean the operating cost?

Q. Yes.

A. They compare very closely.

Q. They come close together?

A. Yes, they do.

Q. Exhibit 156 has been marked for identification. Was this prepared by you?

A. Yes, sir, it was.

Q. Will you explain in detail how this exhibit consisting of four pages was compiled and the factors you have employed, method you have employed in arriving at the estimate of expenses not including profit, etc.

A. We took the total expenses and separated them into the general accounts as prescribed by the Interstate Com-

merce Commission, without going into the primary accounts. And in taking the total accounts for the maintenance of ways and structures we lumped all of the track maintenance for the Sugar Company, performed by the [fol. 643] Sugar Company, separated them between labor and materials and the equipment used in track maintenance like the draglines and things of that sort, and then we took the general overhead and allocated it to the maintenance of ways. Took the labor portion of maintenance of ways and increased that to include the payroll taxes, insurance—which would take care of some of the items in personal injuries, things of that nature that are not included in the Sugar Company accounts,—and vacation pay. The total of that amounted to,—it did amount to 12 per cent. And we projected that and got the total maintenance of way and structures for all the tracks maintained by the Sugar Company.

By Mr. Gwathmey:

Q. You said tracks maintained by the Sugar Company?

A. Yes, sir.

Q. I thought you were talking about maintenance and cost of railroads?

A. Yes, sir.

Mr. Gwathmey: Go ahead, sir.

A. The tracks maintained by the Sugar Company are used entirely by their traffic. That is, the raw cane, the sugar cane inbound and raw sugar and blackstrap outbound.

Ten per cent of the tonnage handled over those tracks represents the tonnage of raw sugar and blackstrap molasses moving outbound. So that 90 per cent of the total [fol. 644] cost of the maintenance of way and structures is considered applicable to the Sugar Cane traffic.

The tracks operated by the sugar company amounted to 33.41 miles and this amount was divided to an average cost per mile of road operated by the sugar company which was multiplied by the 41 miles of track used by the Florida East Coast and Atlantic Coast Line in handling the sugar cane movement which gives an estimated cost for the mainte-

nance of way and structures on both roads for handling sugar cane at $96,029.38.

Q. Now, Mr. Patterson used in lieu of that method the Atlantic Coast Line ratio of maintenance total expenses. You have used a different method?

A. Yes, sir, I have tried to use a method that would be more applicable to the type of tracks, the track located in the same vicinity, subject to the same climatic and use conditions.

Q. Do you think that would be nearer the railroads' maintenance than the Atlantic Coast Line ratio?

A. Yes, sir, I do.

Q. In arriving at this figure of $96,000 for maintenance, have you made any allowance there or yet for the fruit and vegetable traffic which originates in that section and moves in such heavy volume?

A. Yes, this is supposed to represent only the maintenance caused by the sugar cane traffic moving over the [fol. 645] track. There would be considerably more maintenance on those tracks than would be caused by the other commodities moving over those tracks, but then if the cost were sensitized enough to show the difference in the cost that is caused by the use of the tracks and the costs that are caused solely by the existence then this figure would naturally be reduced but we couldn't make those computations because we didn't have the necessary primary accounts to sensitize our cost to that extent so that we included all the cost of the tracks caused by their existence, in this figure and pyramided our cost on the two lines by that proportion.

Q. Now, will you take up maintenance of equipment on page two?

A. The Sugar Company maintains seven locomotives to switch the traffic, sugar cane traffic, handled by them and we, likewise, separated the cost of maintaining these locomotives between labor and material and we used a portion of our transportation expenses in the locomotive supplies and expenses in a portion of our general overhead expenses, and the general overhead expenses for maintenance of equipment accounts and applied—separated that between the portion that is applicable to the locomotives and the portion applicable to the maintenance of cars and we used

the labor, cleaning and firing locomotives and things of that sort and took the labor portion of all the accounts and then [fol. 646] increased it by the 12 per cent explained by way and structures to take care of payroll expenses, injuries, and vacation pay, and you get a total cost of maintenance of locomotives of $42,954.96.

And we likewise broke this between the sugar cane traffic and raw sugar, blackstrap, allowing ninety per cent for the sugar cane. We divided the total amount by this seven locomotives, had an average maintenance per locomotive amounting to $5,522.78. The Atlantic Coast Line and Florida East Coast have three locomotives assigned to the sugar cane movement and multiplication of that three to the average cost gives an estimated cost of repairs for the locomotives used in cane service as $16,568.34.

And then the rental of the sugar cane cars of two cents per loaded car amounted to $14,——

By Comm. Patterson:

Q. Car mile?

A. Excuse me, two cents per car mile, amounted to $14,461.38.

Q. Go ahead Mr. Young.

A. Now, train operations, we took the salaries of the train crews for the Florida East Coast, which Mr. Cecil Jones gave me, at $66.85 for each eight-hour shift. We took the number of trains that were dispatched to the Florida East Coast, 435, and projected that to the $29,079.75, as the salary cost on the Florida East Coast for handling sugar cane.

[fol. 647] And the Atlantic Coast Line salary for the train crew of twelve hours amounted to $74.65. There was 845 dispatched, which gave us $63,079.25 as the salary cost for the train crews on the Atlantic Coast Line.

Water for the locomotives, we set up at $177.43, that is, total amount used by all seven of the sugar cane locomotives. We thought that would be very liberal estimate for the cost of water for the locomotives.

Fuel for train locomotives we estimated for 60 cents per train mile. We got the figure by dividing the total fuel cost for the Atlantic Coast Line by the train miles on the Atlantic Coast Line. We took the 60 cents per train mile

and projected it to the train miles of cane service and arrived at the cost for fuel. The labor portion of these expenses were increased by the 12 per cent to allow for payroll taxes, insurance and vacation. That gives a total cost for operating the trains of $117,405.63.

For station service, we allowed three men at $275 per month for five months of sugar cane movement. That gives $4,125.00 for salaries. Our payroll taxes, insurance and vacation were figures on that as 12 per cent of the labor and inter--Then station supplies and expense estimated $400, which is $5,020 for total station expense.

By Comm. Patterson:

Q. All of that is shown on the face of the exhibit. You are reading that.

[fol. 648] A. I want to make one correction on transportation train operations. I said payroll taxes, insurance and vacation was figured at 12 per cent of salary. I want to correct that. The payroll taxes were computed differently in that instance. The earnings of these train crews amount to in excess of three hundred a month and the payroll taxes are applicable only to amounts up to $300 a month, so we took the number of train crews and limited their earnings to three hundred a month, when computing payroll taxes.

In computing our locomotive depreciation, we valued the locomotives at $35,000 each and we allowed the Atlantic Coast Line in addition to the two locomotives assigned to the service, one extra locomotive as a standby locomotive for the computation of depreciation. We took the 3.69 per cent as the annual depreciation shown in the Florida East Coast Annual Report, as our basis for depreciating the steam locomotives and the Florida East Coast used in their last season's operation one Diesel locomotive for a period of a month or maybe a little over, so that we allowed them depreciation based on the use of one Diesel locomotive for our full season, valued that locomotive at the rate of $125,000. We also used their average depreciation base from the Annual Report to arrive at our total depreciation and we then took the cane season portion of that which is five months to arrive at our total depreciation figures.

[fol. 649] We summarized all those costs to arrive at our

$254,904.93 which is our total operating expenses including our payroll taxes. It also includes a portion of the vacation pay allowed to the employees.

And the operating revenues from the cane service, based on the two cents per loaded car mile, amount to $400,774.39, which gave an operating ratio of 63.6. But if you go back in there and exclude all of the payroll taxes, which are not usually included in computation of operating ratio, this ratio then would drop to about 62.

Q. What was that, please?

A. 62. Without the taxes, it should be 62.

Now, the revenue produced under this sugar cane movement at two cents a mile is based on the minimum of 36,000 pounds, up to December 31, 1948, and 38,000 pounds minimum after December 31, to the end of the season.

By Comm. Patterson:

Q. The industry have a standby locomotive. Did you include their standby locomotives?

A. They have the seven locomotives they operate. They operate two up on the end at Canal Point and five in the yards. They are using them,—they are running around all the time using one or the other.

Q. They don't have any standby?

A. They are not all of them in service at the same time. There would be some of them standing by for use.

[fol. 650] Comm. Patterson: I see.

By Mr. Pettijohn:

Q. For clarification, I'd like to ask you a few questions: On sheet one of your exhibit 156 the costs there are costs which obtain with respect to the Sugar Corporation which you have adjusted to a mileage basis to the Florida East Coast and Coast Line costs, are they not?

A. Yes, sir.

Q. And the same applies with respect to your maintenance of equipment expenses?

A. Yes, sir.

Q. With respect, however, to your third sheet on transportation expenses, the first two items are based upon the estimated costs of train and engine crews, are they not?

A. Yes, sir.

Q. And the third and fourth items are averages obtaining on the Atlantic Coast Line in the previous year?

A. Which items are you referring to, three and four?

Q. Fuel for train locomotives and water.

A. Water is the total water cost of the water consumed by the seven locomotives on the Sugar Company—that is, the Sugar Company's seven locomotives for the entire year, cost for the Sugar Company locomotives for the entire year.

Q. Because you thoug-- that was applicable on the other two railroads?

A. We knew it was overstated. Whenever there was doubt in our mind as to the cost, we gave them the benefit.

[fol. 651] Q. Your fuel costs are based on an estimated 60 cents per train mile?

A. Yes, sir.

Q. Was that obtained from the Coast Line report or from the Florida East Coast?

A. Coast Line report.

Q. For which year, '48, or '47, do you know?

A. I believe that was '48. I had both of them in front of me. Now I believe it was '48.

Q. Fuel costs would vary considerably according to tonnage of trains, would they not?

A. Yes, it would vary according to tonnage, speed of train and the type of—I don't mean type,—I mean on the section of the country, whether it was mountainous country or grades or level country,—things like that. There is a lot of variation.

Comm. Patterson:

Q. Would type of equipment have any influence?

A. Yes, sir. Type of equipment would. Box cars have more wind resistance than flat cars.

Q. Do roller bearings have more resistance?

A. Yes, sir, this was taken as general over-all average.

Q. More or less?

A. More or less.

Comm. Patterson: That is all.

[fol. 652] Mr. Pettijohn: That's all.

By Mr. Hillyer:

Q. Mr. Patterson referred with respect to this car rental to two cents per loaded car mile on sheet two of exhibit 156. Is that the actual amount of money paid by the trunk line to the Sugar Company for the car rental?

A. Yes, sir, it was.

Q. On page four, it wasn't quite clear to me from your phraseology on that whether in arriving at the next to the last item, operating revenues, $400 odd thousand dollars, whether you had deducted that car rental or whether that was the total revenue paid on freight.

A. No, this is the total revenue paid the Florida East Coast and Atlantic Coast Line, for the transportation of sugar cane. This $14,000 is a separate item that was paid back to the sugar company and would be classed as one of their expenses in lieu of freight train car repairs.

Q. Then do I understand you have not charged $14,000 into the total expenses?

A. That is what they paid to the sugar company. No they are not charged.

Q. It is not included in the $400,000?

A. No, sir, they are not.

Q. Now, Commissioner Patterson inquired as to the liberality of that 2 cents per loaded car mile. What was the actual cost of those cars to the sugar company? Do you [fol. 653] have that in any form, in cents per loaded car mile or any other way?

A. I have it in my detail. The cost of maintaining those cars runs at about roughly $7,600. They were valued at $803,704.72, depreciated at 2.5 percent and the depreciation figure would be $20,092.61.

Q. Give me that again?

A. $20,092.61, including return on investment of five and three-fourths percent on the book value of $502,316 for the cars would give us a return of $28,883.17 and the sum of all the items for the maintenance and ownership of the cane cars amounts to $85,594.28, for which the $14,461.38 was the rental received and would give us about $71,133.90, that you might say is given to the railroads by the sugar company owning the cars in lieu of having their railroad furnish that equipment.

By Comm. Patterson:

Q. The sugar company owns the cars and the railroads get a couple of months' service a year out of the cars and *apy* for them on an annual basis, is that so?

A. We are using five months.

Q. Five months?

A. Yes, sir, that is during the past season they were in operation five months.

Q. For which they paid rental there on an annual basis?

A. Yes, well, on an anual basis of the use of the mileage [fol. 654] made by those cars.

Comm. Patterson: Proceed.

By Mr. Hillyer:

Q. Do I understand correctly that the use of these cars, including the return, cost the sugar company a great deal of money over and above the allowance the two cents per loaded car mile paid by the railroads?

A. Yes, sir.

Q. Now, referrring to your page four, where you show your total operating expenses, including payroll taxes of some $254,000 did you have available any method of adding to that figure for investment? Return to investment, and other items which would ordinarily go into the figure. Did you distribute cost including return?

A. No, sir, we didn't have any way of knowing the investment of the tracks and facilities nor the taxes paid on that and anything we made would have to be a pure guess and we didn't *fell* it was right just to make a guess on something like that.

Q. Whereas Mr. Patterson used a guess on his exhibit No. 155, you were not willing to take that kind of guess?

A. No, sir, I didn't have enough historical background of facts to base an estimate on.

Q. Now, was this operating ratio you computed,—I think you said 62?

A. Yes.

Q. From the standpoint of railroad operation, how does [fol. 655] that compare with the operating ratio of an efficiently operated railroad with plenty of business?

A. That would be a low operating ratio.

Q. By low, you mean favorable?

A. Very favorable.

Mr. Hillyer: That is all. We offer in evidence Exhibit 156.

Comm. Patterson: It may be received for the record.

(Exhibit No. 156, Witness Young, was received in evidence.)

Mr. Gwathmey: Mr. Commissioner, the opposition has introduced a rather complicated cost study here and if it would be agreeable to adjourn for lunch a little earlier so I could have a chance to talk it over with my accounting people, I'd be glad to do that. Otherwise, I will go ahead and do what I can.

Comm. Patterson: Do you have another witness you can put on before lunch?

Mr. Hillyer: Well, these exhibits were furnished to the carriers a few night ago. I think he is entitled for time for examination and to prepar cross-examination. I don't think he should be required go in—and Mr. Young will be available later on.

Mr. Gwathmey: I will be ready right after lunch.

Comm. Patterson: We will go to lunch now and come back [fol. 656] at half past one.

(At 11:45 a.m. a recess was taken until 1:30 p.m. of the same day.)

[fol. 657] Afternoon Session

Comm. Patterson: Come to order, gentlemen. You may proceed.

Paul L. Young resumed the stand and testified further as follows:

Direct examination (continued).

By Mr. Hillyer:

Q. Mr. Young, in making a pencil notation of some of the figures you gave this morning, they didn't add up. I

thought maybe I was wrong. Do you have a correction to make?

A. Yes, in the cost of maintaining——

By Comm. Patterson:

Q. What exhibit are you talking about? 156?

A. Yes, sir, page 2 of the maintenance of equipment. It is not on there. When we were talking of maintenance of cars, I gave some of my detail sheets' figures and I said that the cost, labor cost amounted to approximately $7,600. That should be $36,618.50, is the cost of labor and materials used in the maintaining of these cars and the depreciation on return on investment that I gave in those figures we added to those would give a total of $85,000.00.

By Comm. Patterson:

Q. Where is that item?

A. It is not on there. It was in my discussion of the ownership and maintenance of cane cars.

[fol. 658] Mr. Gwathmey: May I ask something off the record?

Comm. Patterson: Off the record.

(Discussion off the record.)

Comm. Patterson: On the record.

Mr. Hillyer: Do you want cross-examine Mr. Young later?

Mr. Gwathmey: I understand it is agreeable to have Mr. Young stand aside for the time being?

Comm. Patterson: That is correct. You are excused temporarily, Mr. Young.

The Witness: All right, sir.

(Witness excused.)

Comm. Patterson: Do you have an attorney, Mr. McGill?

Mr. Hillyer: Mr. McGill is appearing without counsel and wants to make a statement.

Comm. Patterson: You will proceed, Mr. McGill.

W. M. McGILL was sworn and testified as follows:

Direct examination.

By Mr. Hillyer:

Q. State your name and address first.

A. My name is W. M. McGill. My address is Perry, Florida. I——

Q. And your occupation?

A. I am Traffic Manager for Liveoak, Perry and Gulf Railroad Company and also the South Georgia Railway Company.

Direct statement.

[fol. 659] Mr. McGill: The position of our two short lines is that we are opposed to the increases or any further increases than those presently permitted by the Florida Railroad Commission and we are in favor of the continuation of the exceptions on certain raw materials moving from the forest to the mills for processing, such as logs, pulpwood, sugar cane, fertilizer materials and so forth. That proceeding before the Florida Railroad Commission, in which the railroads were proposing increases on the rates on lumber and forest products, I testified on behalf of the Live Oak, Perry and Gulf Railroad Company in opposition to those increases.

I testified that the Live Oak, Perry & Gulf Railroad Company was then a 75 percent lumber carrying railroad and absolutely dependent upon this traffic, that one important commodity after another has been diverted from railroads to truck, and that the loss of the forest products traffic would not leave enough to justify the continuation of this railroad.

That was in Florida Railroad Docket 1418, transcript 374, 377 and 378.

In 1948 our revenue was 70.82 percent derived from forest products as to the total revenue of the railroad. In this same proceeding Mr. F. M. Yarborough, then General Freight and Passenger Agent of the South Georgia Railway Company, supported me in my position at that time in representing that railroad. And he testified that lumber is, was the principal commodity which furnishes revenue

[fol. 660] to the South Georgia Railroad, that from 1928 to 1940 his lumber traffic declined 53.1 percent and crate material declined 61.4 percent, that mill equipment in Georgia on that line had already discontinued shipping by rail, that lumber shipments from Greenville, Florida, to Florida points was practically lost to trucks. The mill at Boyd was the principal source of revenue for lumber traffic. And other mills would divert their traffic to trucks if the rates on lumber and forest products should be increased and it would practically put his railroad out of business. That is transcript 1138.

In 1948 they derived 59.94 from total volume for forest products.

In this same proceeding before the Florida Railroad Commission Mr. O. O. Miller, President of the Marianna-Blountstown Railroad, a known lumber line in West Florida, testified 39 percent of revenues derived from lumber traffic and 28 from Florida intrastate traffic and that the proposed increase would divert traffic to trucks and barge and loss of intrastate lumber business would cause their line to cease operations entirely and this wasn't *wasn't* any question about that. He asked the Florida Commission not to allow any increases regardless of what kind of scale may be adopted, transcript 1200.

Mr. Gwathmey: If the Commissioner please, I am going [fol. 661] to object to the injection into this record of testimony given by somebody in the proceeding before the Florida Commission. I don't understand that the witness represents the Mariana-Blountstown Railroad and there is no representative of that railroad here. We have no opportunity to question them.

Mr. Hillyer: May I say a word on that subject? We think this Commission should know what the Florida Commission had before it in a general way, particularly as to the attitude of the railroads, and Mr. McGill is showing here there were five railroads which are dependent upon Florida products for a living who objected to the increases before the Florida Commission and then he is going ahead to present his position here, but we think that is an important point to consider in a Thirteen Section case.

Mr. Gwathmey: I have no objection to his stating five railroads objected before the Florida Commission to the increases, but I do object to his undertaking to say what they said and the views they expressed.

Comm. Patterson: Confine your testimony to the position they took before the Florida Railroad Commission. You can let the testimony go in, but otherwise, I think the testimony has no place here.

A. Then——

Comm. Patterson: The transcript of the Florida Railroad Commission is not in this record. If you confine it to the [fol. 662] position they took, it is all right.

A. Shall I then—Inasmuch as I have stated the position of all except the Apalachicola & Northern—Mr. N. C. Edwards, appearing in the same case took a similar position as the other railroads did before the Commission in opposing any further rate increases.

By Mr. Petteway:

Q. Who did Mr. Edwards appear for?

A. Apalachicola & Northern Railroad and it is our understanding that the last two named railroads of the ones I mentioned, have not changed their position inasmuch as they were not shown as a party to the carriers' petition in this particular proceeding.

By Comm. Patterson:

Q. Are all those railroads industry owned railroads, do you know?

A. No, sir, they aren't. They might have some industry relations but I wouldn't think that either of the two I am not representing——

Q. Do you know?

A. Off the record.

Comm. Patterson: On the record.

A. Let me say this first and then I will put on the record. The only one, the Marianna-Blountstown Railroad is one that duPont interest bought in connection with some other lands. In other words, they gave it to them and they are

still operating it, but he has, as I understand it, he has no industry at all on that particular railroad.

[fol. 663] Comm. Patterson: We can find out. You can go ahead.

A. Yes, sir, I am sorry about that.

In this proceeding before the Interstate Commerce I am testifying for the South Georgia Railway Company and for Live Oak, Perry & Gulf Railway Company in opposition to any increase on rates on lumber and forest products including logs.

Since the time a Florida Commission authorized a certain scale of rates to be applied on lumber intrastate in Florida based upon the evidence in that case, they have authorized a 20 percent increase under Ex Parte 162 and a 20 percent emergency charge under Ex Parte 166, which is in addition to the scale prescribed at that time. And also have authorized 20 percent increase as an emergency charge on logs under Ex Parte 166.

We have had other experiences which lead us to take this position. For example, a recent survey was made to determine the amount of new articles moved by truck during the year 1948 and it was found nationally 72 percent of the entire movement by truck and they anticipated that this percentage by truck would increase materially in 1949. That was in a front-page write up in the Wall Street Journal recently.

By Comm. Patterson:

Q. Is that your authority for the position you are taking? The Wall Street Journal?

A. That is right, to show the trend of the traffic. I attribute this to high rail rates and it is further borne out by [fol. 664] recent adjustment on automobiles in which they are reducing the rates to further meet truck competition and if the Commissioner would like to have it, I have the specific rates involved. It is rather general.

By Comm. Patterson:

Q. You are testifying ahead.

A. Which is also indicative that the rates are in fact too high and that the railroads are attempting to charge more

than the traffic can bear and that it is a mistake of railroad management to increase—to impose further increase on traffic which is susceptible to truck competition.

In a recent clipping from the Jacksonville Times-Union, they have a write-up showing the amount of citrus fruits being trucked from Florida, out of the Jacksonville Times-Union, June 7, 1949, covering the 1948 movement. It says truck shipments were approximately 40 percent of this year's total, 86,131 trucks. Last season it was 23 percent of a 68,421 total. That is covering citrus.

Mr. Hillyer:

Q. That last figure you gave was cars? 68,000 cars?
A. Yes.

By Mr. Petteway:

Q. The Jacksonville Times-Union?
A. Yes, sir. June 7th.
Q. Do you know who owns that newspaper?
A. No, sir, I don't.

Recently, leaf tobacco rates have been increased generally [fol. 665] throughout the Southeast from producing origins to redrying plants and destinations to meet truck competition to prevent the complete diversion of this traffic to trucks.

By Comm. Patterson:

Q. Increased?
A. Excuse me. Did I say "increased"? I meant to say decreased.

On watermelons both of these lines suffered a severe loss of revenue due to diversion of trucks, even before the 20 percent increase.

There was a mill engaged in the lumber business at Mayo, Florida, on the Line of the Live Oak, Perry and Gulf Railroad Company. That movement has been substantial for a number of years until the 20 percent increase was permitted by the Railroad Commission of Florida. About the time that increase went in this mill ceased its movements by rail and went to trucks.

These are the kinds of experiences we have been having which lead us to the conclusion that any increases in the rates on lumber and forest products, including logs, and other raw material would threaten the existence and operation of short lines such as Live Oak, Perry & Gulf Railroad Company and I believe would be to the other two short line railroads aforementioned.

There's been enormous changes. No shipments to the mills on our line. For example to points such as Alabama, [fol. 666] Birmingham, where business was moving by rail is now moving by trucks by reason of high interstate rates from our line to Birmingham.

We would like to reduce those rates if we could.

There is now a joint conference set for August 9 of this year in Atlanta between the southern railroads and the southeastern lumber industry with a view of adjusting rates in the Southeast in an endeavor to recover the vast forest tonnage now moving by truck.

In a similar proceeding against the State of Georgia, the Central of Georgia Railway, Georgia Railroad, and the Atlanta and West Point Railroad, and possibly others, have announced their withdrawal to the petition in that State.

Mr. Gwathmey: Pardon me. What was that statement? May I have that read back?

(Last answer was read back by the reporter.)

Mr. Gwathmey: If the Commissioner please, I happen to represent those railroads. I know of no proceeding of that sort that has been instituted in Georgia. I don't know the authority for the witness' statement.

By Mr. Gwathmey:

Q. Where do you get your authority, Mr. McGill?

By Comm. Patterson:

Q. Do you know that to be a fact or did somebody tell you?

A. The only way I know it is a fact, I have it in writing from a member of the Southern Freight Association. That [fol. 667] is as far as I can go, because we are only members of the Florida-Georgia Freight through short line.

Mr. Gwathmey: No 13 Section has been filed with the Commission in respect to Georgia rates.

A. Central Georgia was supposed to have announced their withdrawal on March 28 and the Georgia Railroad and the A&WP Railroad on March 30th.

If I'd be permitted to make this remark: the reason that I have made mention of that is that it seems conclusive that the Southern Carriers themselves now, particularly some of them, realize the rates are too high and the traffic is going to trucks.

By Comm. Patterson:

Q. That is your opinion?

A. That is my opinion.

The carriers in the South, operating within a state over an interstate route, have announced their intention to meet the intrastate over such interstate route. It will be voluntary waiving of increases granted by the Interstate Commerce Commission to gain traffic from a friendly competitor.

I believe that is all.

Comm. Patterson: Is there any examination of this witness by anyone?

Mr. Gwathmey: I want to ask a question, please.

Comm. Patterson: Go ahead.

Cross-examination.

[fol. 668] By Mr. Gwathmey:

Q. Mr. McGill, you said, I believe, that you are appearing here today as Traffic Manager of Live Oak, Perry & Gulf Railway and the South Georgia Railway, did you not?

A. That is correct.

Q. Did any of the other short line roads which you mentioned authorize you or instruct you to appear here today on their behalf?

A. No, sir.

Q. What important lumber companies operate on the lines of the two roads for which you are appearing?

A. Well, you have the South Georgia. You have the largest shipper on that line in Florida is at Boyd, Florida. They ship locally within Florida.

Q. What is the name of the company please?

A. Weaver-Lothrage Lumber Company.

Q. What other important lumber operators are located on the LOP&G or the South Georgia?

A. You have Brooks-Scanlon, Inc. at Foley on the LOP&G and you have on the LOP&G, Grainger Brothers at Perry. You have at Mayo, J. R. Bolen Lumber Company and Boatwright and Williams Lumber Company.

Q. Are you connected in any way with the Brooks-Scanlon Lumber Corporation?

A. Yes, sir.

[fol. 668a] Q. In what capacity?

A. Traffic Manager.

Q. I understand you to say, Mr. McGill, that you are Traffic Manager of the Brooks-Scanlon Lumber Corporation in addition of being Traffic Manager of the LOP&G and the South Georgia Railway Company, is that right?

A. Right.

Q. Are you testifying in this case as Traffic Manager of Brooks Scanlon?

A. No, sir.

Q. Does the Brooks Scanlon Lumber Company have any interest in LOP&G Railway?

A. Very mild.

Q. Do any of the stockholders of the Brooks Scanlon Company also own stock of the LOP&G Railway?

A. I think that is true, but you would have to refer to the annual reports to determine just what that is. I am not familiar with it.

Q. Isn't it a fact that the majority of the stock of the LOP&G, if not all, is owned by the same interests that own Brooks Scanlon Lumber Company?

A. I don't believe I could answer that.

Q. Do you know?

A. No, sir, because we have individual stockholders and each company does have stock in the other. To what extent [fol. 669] that is, I don't know.

Q. Isn't it a fact that the South Georgia stock is also owned by Brooks Scanlon Corporation or some officers or stockholders of that company?

A. They own minor stock.

Q. Is there any connection between the South Georgia Railway and any of the other lumber companies operating on either of these two railroads?

A. No, sir.

Q. None whatever?

A. State that question again?

Mr. Gwathmey: Read the question.

(The last question was read by the reporter.)

A. I'd have to qualify that statement. You just asked the question if the Brooks Scanlon had interest in the South Georgia. To that extent they would have interest in the South Georgia, but none other than what you had previously mentioned.

Mr. Gwathmey: Would you read me that last statement, please?

(Last answer was read by the reporter.)

Q. My question was whether they have any interest in the South Georgia Railway.

A. I just answered that before then; yes, but minor.

Q. Now, I ask you do any of the other lumber companies [fol. 670] operating on these railroads have interest on the South Georgia Railway?

A. Not that I know.

Q. Do you know the facts?

A. I am rather certain, but I wouldn't say definitely. I don't think so.

Q. What've your two railroads done about the interstate increases. Did you make them applicable in connection with interstate shipments moving to or from points on your lines?

A. In some instances.

Q. In what instances?

A. We have certain raw materials and we have stated here that going from the forest to the mills, certain things, such as logs, pulpwood and things of that kind, your normal traffic, but to the extent of our local rates which doesn't move any traffic.

Mr. Gwathmey: That's all.

Comm. Patterson: You are excused.

Mr. Petteway: Just a minute. I'd like to make an inquiry of the Commission with reference to the order calling this investigation. Am I correct in the understanding that all of the railroads operating in Florida are made respondents to this proceeding?

Comm. Patterson: Yes.

Mr. Gwathmey: I might say that I prepared the carriers' [fol. 671] petition and my instructions were to include all the railroads in Florida in the petition. I didn't undertake to go around and include all these little short line railroads, but I don't understand it is encumbent on the carriers to name all the railroads. Any one-section company could file the petition. The petition is filed on behalf of the roads listed in the appendix.

Exam. Mattingly: Regardless of what the petition said, the Commission said who the respondents were. We said all of them.

Comm. Patterson: They made them all respondents.

By Mr. Petteway:

Q. You were invited to participate in the petition?

A. Yes, sir.

Q. You declined?

A. Yes, sir.

Q. As a respondent to this proceeding, you have appeared here in opposition to the proposed increases?

A. Correct.

Mr. Petteway: That is all.

By Mr. Hillyer:

Q. You made reference to the mill at Boyd and some lumber company, some name and then Lothrage?

A. Weaver-Lothrage.

Q. Is that the same company for whom E. L. Loughridge testified yesterday?

[fol. 672] A. That is correct.

Q. I think the inference from your testimony as to LOP&G, that most of the traffic was traffic of Brooks Scan-

lon—do you know how much the revenue of Brooks Scanlon was?

A. During 1948, of the total revenue of LOP&G, 19.2 percent of the total revenue was from traffic originating with or consigned to Brooks Scanlon, Inc.

I might add for the benefit of the record that from Brooks Scanlon, based on the total revenues, the percentage of Brooks Scanlon's revenue to the South Georgia Railway was less than eight percent of their total revenues.

Q. Does the Brooks Scanlon have its own logging railroad?

A. Yes, sir.

Mr. Hillyer: That's all.

Comm. Patterson: You are excused.

(Witness excused.)

Mr. Ribe: Following Mr. Petteway's inquiry, I would like to inquire if there is anyone with the respondent that has any authority to present any evidence or testimony for the Mariana-Blountstown or the Apalachicola Northern, to represent them in any way?

Mr. Gwathmey: I have received no specific instructions from them one way or the other.

Exam. Mattingly: Do you want to correct this exhibit of yours while you are on your feet?

[fol. 673] Mr. Ribe: On page 19 of Exhibit No. 107, opposite McKinnon, the figure 50 should be inserted in Column 3 where there is a blank. Now, in column 4, the figure 60 cents should be inserted opposite stations Gatewood Junction through Pine, Florida. In Column five, the figure 75 cents should be inserted opposite the stations Gatewood Junction through Pine.

Now, the asterics reference mark which is now shown in the exhibit in columns four and five only has application in connection with stations Powers through Muskogee.

In explanation of this correction, traffic moving from stations Gatewood Junction and north is interstate traffic. The Frisco Railroad between Muskogee and Gatewood Junction goes through a small portion of the State of Alabama. There are no railroads on the Frisco in Alabama between Muskogee and Gatewood Junction and in making

up the exhibit, I overlooked that the interstate increased had to be added to stations Gatewood Junction through Pine.

Mr. Gwathmey's inquiry yesterday as to whether or not from any Florida stations we had any traffic that moved by interstate routes brought this to my mind.

PAUL L. YOUNG was recalled to the stand and testified further as follows:

Cross-examination.

By Mr. Gwathmey:

Q. Am I correct in understanding that you are not regu- [fol. 674] larly employed by the United States Sugar Corporation, but have been specially obtained by that company for purposes of this proceeding?

A. Yes, sir.

Q. And you have prepared this exhibit 156 on the basis largely of information furnished to you by Mr. Patterson with Jones and other officials of the Sugar Corporation, is that right?

A. Well, it was furnished by them from the accounts that they maintain.

Q. They gave it to you?

A. Yes, sir.

Q. I understood you to testify that the rates of pay for trains and maintenance employees, as paid by the Sugar Corporation is generally about eighty percent of those paid by the Coast Line and of the Florida East Coast; was that your statement?

A. No, sir, I don't think it was.

Exam. Mattingly: It was another witness.

By Mr. Gwathmey:

Q. Another witness perhaps made that statement. Do you know what the facts are?

A. The transportation expenses, direct expenses—wait a minute. Let me restate that. The salaries of the train crews is the exact salary that is paid by the railroads.

Q. I am speaking now for rates of pay for maintenance [fol. 675] of trains as well as way and structures.

A. Maintenance of way and structures?

Q. Rates paid employees of the sugar company. Someone stated about 80 percent of what the railroad pays. I am asking you if your——

Mr. Pettijohn: I think it applied to train crews and I think he said it was somewhat less than the railroads with respect to rates and way and structures.

Mr. Gwathmey: The record will speak for itself.

A. I didn't hear that testimony.

By Mr. Gwathmey:

Q. Do you know?

A. This is the wages paid by the Sugar Corporation and I was under the impression they are comparable with the railroad wages.

Q. That is what I am asking you. Do you know if they are comparable?

A. I haven't made an absolute check to determine that, Mr. Gwathmey.

Q. If it is true that they are at least 80 percent lower as compared with the rates paid by the railroad, then your figure as shown in your exhibit in Exhibit No. 156 of $254,904 would be substantially increased, wouldn't it, Mr. Young?

A. Well, I wouldn't say substantially increased.

Q. Well, you show the first item on your page one of the [fol. 676] ex*jobo*t "labor used in maintenance." Now, am I correct in understanding that that is labor used by the Sugar Corporation?

A. Yes, sir.

Q. In maintenance?

A. Yes, sir, it is.

Q. Now, I ask you if the carriers' wage rates are substantially higher than those paid by the Sugar Corporation, the figures shown on your Exhibit No. 156 would be materially changed, wouldn't they?

A. There would be a change in the ratio. This maintenance is shown on sheet one compared to the maintenance for the like hours of the labor on the railroad.

Q. Because you have taken the maintenance of way and the structures cost to the sugar company and used it as cost for the railroad?

A. That's right.

Q. Now, will you turn to sheet two of your exhibit? You have based your estimated cost for locomotive maintenance on the assumption that the Atlantic Coast Line and Florida East Coast employs only three locomotives in thie service, haven't you?

A. Yes, sir.

Q. On page 4 you include in our exhibit depreciation on five locomotives?

[fol. 677] A. Yes, sir.

Q. Why didn't you compute repairs and costs on basis of five locomotives?

A. This maintenance was based on the use made of the locomotives in the cane service and the repairs cover the wear and tear of the locomotives in the cane service.

The five locomotives shown on the sheet four, allows an extra locomotive on the Florida East Coast and on the Atlantic Coast Line in case of a breakdown in service and you need an extra locomotive to substitute for that one.

Q. Well, isn't it a fact that the Atlantic Coast Line has assigned to the cane service exclusively four locomotives and the Florida East Coast, one locomotive?

A. I couldn't say. I understand that they maintain two locomotives at Clewiston during the can- season on the Atlantic Coast Line for the cane service, and one locomotive on the Florida East Coast.

Q. Well, if you'd used the correct number of locomotives assigned to this service by the Coast Line and the Florida East Coast, your locomotive repair cost would be substantially higher than you have shown on the exhibit, would it not?

A. You are speaking of assignment of locomotives and I am talking about use of locomotives on mine.

Q. All right, sir. On page three of your exhibit you compute transportation expenses. You have used an esti- [fol. 678] mate of sixty cents per train mile in arriving at the cost of fuel for train locomotives, have you not?

A. Yes, sir.

Q. How do you reach the conclusion that the sixty cents per train mile—how did you arrive at the sixty cents per train mile?

A. I took the annual fuel cost of the Atlantic Coast Line, divided it by the total train miles and arrived at the cost per train mile and used that on this as the estimated cost for handling fuel per train mile.

Q. For what period?

A. For the year.

Q. For the year?

A. Yes, sir.

Q. Which year do you have in mind?

A. 1948.

Q. The year 1948?

A. Yes, sir.

Q. Do you know that the average cost of the Atlantic Coast Line fuel for a train mile for freight locomotives for the year 1948 was seventy-five cents and that this takes into consideration both steam and Diesel fuel?

A. I knew this covered a number of variables, but at the time that was the only figure we had that was available to us.

Q. You didn't take under consideration what the Coast [fol. 679] Line average cost for the year 1948 was?

A. Only what we could get. That was the annual report to the stockholders.

Q. That can be computed from the annual report. Do you know the difference between the cost per mile of fuel for steam locomotives and Diesel locomotives?

A. No, but I know there is quite a difference.

Q. Have you included in your transportation cost, costs for dispatching trains?

A. No, that is done by the Sugar Corporation.

Q. What?

A. No, that is done by the sugar company.

By Comm. Patterson:

Q. The sugar company?

A. The Sugar Corporation.

By Mr. Gwathmey:

Q. Do these——

By Comm. Patterson:

Q. Do they dispatch the train?

A. Issue the train order and tell the crews what to do and where to set out cars.

Q. The sugar company has control of the movement of the trains on these two lines, the Atlantic Coast Line and the Florida East Coast?

A. They give each conductor a typewritten sheet of cars he is to pick up.

Q. Are you talking about the movement of the train, the movement of the train itself?

[fol. 680] A. I am a little vague on that point. I discussed that. I don't recall right now what the discussion was. That is the reason we left the dispatch out.

Q. It is not in?

A. No, sir.

By Mr. Gwathmey:

Q. Are you including anything for engine house charges?

A. That is included in the maintenance of equipment accounts o-er here. All of the expenses in transportation directly affected by the equipment were removed from that and put over in maintenance of equipment.

Q. You haven't included that in transportation expense?

A. No.

Q. Have you included anything for coaling and washing engines and other related expenses?

A. Yes, sir, labor. Labor preparing, cleaning and firing locomotives under the maintenance of equipment.

Q. On page 2?

A. Yes, sir.

Q. Mr. Young, are you aware of the fact that the Atlantic Coast Line employs a General Agent at Clewiston at $465 a month during the cane season? Do you know that?

A. I knew they had an agent, a General Agent there. I didn't attempt to proportion the General Agent's expense to that, considering that would be included in the general overhead.

[fol. 681] Q. Why did you not include in your exhibit an allowance for a return on the carriers' investment in road and equipment?

A. That was impossible to calculate what their investment was.

Q. That is a good reason. Do you think that is an excuse for not allowing us to be compensated?

A. Well, you have forty percent margin,—well, 36.4 percent margin in your ratio to compensate for investment and turnover.

Q. According to you- figures?

A. They are overstated.

Q. Do you have any idea as to the amount of the carriers' investment in property used in the handling of cane?

A. That property is used in cane,—I don't have any idea of the investment. I know it is substantial, but on the other hand, it is used for other than cane service and if you try to bring a return on that, it would have to be apportioned between cane service and other traffic and we didn't feel like we could make that apportionment without more substantial figures to work on.

Q. So you just didn't do it?

A. Didn't do it and left the margin that covered that.

Mr. Gwathmey: That's all thank you.

Redirect examination.

By Mr. Hillyer:

Q. Mr. Young, going back to the first item on page one [fol. 682] of your exhibit No. 156: If that actual labor item for maintenance of the sugar company were inflated to cover the difference between the wage scales of the sugar company and the railroads for the crew, would it—how much would it affect that figure? If the wages of the sugar company are 80 per cent of the wages of the railroad, how much would the figure be inflated? Just roughly and in round numbers? Ten thousand?

A. If it were 80 percent, just $3,600.

Q. The other way.

A. That would be roughly around about 15,000 dollars, close to $15,000.

Q. You would add 25 percent to expand that?

A. Yes. Wait a minute. I was working backwards. It would be about $22,000.

Q. No, of $41,000 would be——

A. $41,000? We must not be looking at the same figures. Wait a minute. Excuse me. I've got the wrong page. I was looking at page 2.

By Mr. Pettijohn:

Q. If you assume that the railroad expenses for labor were 25 percent higher than the Sugar Corporation, you would add 25 percent to the figure $41,000?

A. Yes, about $10,000, a little over.

Q. And you'd apply that to all the labor costs where your labor cost was 80 percent of the railroad labor cost? [fol. 683] A. Yes, that would apply on sheet one and sheet two.

By Mr. Hillyer:

Q. But would not apply on sheet three, would it?

A. No, sir, it would not apply on sheet three.

Q. In other words, roughly, it is ten or twelve thousand dollars that might apply?

A. That small difference was more than offset by the overstatement in cost and the inefficiencies of operation that were projected on that that we paid for that could be corrected and they could handle this more efficiently and do it for substantially less money than is shown in the exhibit here.

Q. If that change were made in your final figure on sheet four, it would have only a small effect on the operating ration?

A. Very small percent.

By Comm. Patterson:

Q. If you used—if you improved the operating, there would be no change?

A. That is right.

Q. Do you think that could be done?

A. Sure.

Mr. Hillyer: That is all I have.
Comm. Patterson: You are excused.

(Witness excused.)

CECIL JONES was recalled to the stand and testified further as follows:

[fol. 684] Direct examination.

By Mr. Hillyer:

Q. Mr. Jones, you heard the testimony of Mr. Young about dispatchin- trains?
A. Yes, sir.
Q. Tell us what you would do in regard to dispatching?
A. Furnish written instructions to the Coast Line conductor as to what he is to do on that trip.
Q. Would that otherwise be done by the railroad dispatcher ordinarily?
A. On their trains, it is.
Q. And you do that for them?
A. Yes.

By Comm. Patterson:

Q. Just a minute. That has nothing whatever to do with the operation of the train?
A. Nothing whatsoever as to the actual operation.

By Comm. Patterson:

Q. That is done by the railroad?
A. Correct.

Comm. Patterson: You are excused.

(Witness excused.)

Mr. Hillyer: Off the record.
Comm. Patterson: Off the record.

(Discussion off the record.)

Comm. Patterson: On the recored.
Mr. Petteway: I would like to call Mr. Hinnant back to the stand.

[fol. 685] C. L. HINNANT was recalled to the stand and testified further as follows:

Cross-examination.

By Mr. Petteway:

Q. Mr. Hinnant, do you know how many of the railroads operating in Florida are invited to participate in this proceeding?

A. I don't think there was a one of them that was overlooked unless it might have been Trans-Florida Central and when you say invited—I wrote them indicating that the petition would be filed and said we assumed they desired to join in.

Q. Did you send them a copy of the prepared petition?

A. No.

Q. Were there any of those railroads that failed or declined to participate?

A. If so, I didn't see them. I saw nothing from any of them declining.

Q. In the preparation of your testimony, did you request information from all of the roads operating in Florida?

A. I did not.

Q. Of those that you requested information, did any of those fail or decline to furnish any information?

A. The Georgia Southern & Florida declined to go to the trouble to get up their intrastate movements, such as I included in Exhibit,—in Section B of my exhibit, I believe. Let me see. No, they furnished that. They furnished that. [fol. 686] No, wait. They furnished that for the less-carload, but they wouldn't do it for the carload. But the other information they did furnish.

Q. Have you included any statistical data from the Apalachicola Northern, the Georgia & Florida, the LOP&G, South Georgia, Mariana-Blountstown, or the Trans-Florida Central?

A. No.

Q. Do you find that you are able to meet highway competition on much of your short haul traffic without establishing truck competitive rates?

A. It is according to the traffic, Mr. Petteway. We have not established truck competitive rates on, for example,

pulpwood which is a very heavy moving traffic for short distances, or otherwise. We do find that it is much more difficult to meet competition by truck for short distances at any rates than it is for long distances.

Q. What is the dividing line between short distances and the longer distances at which you can reasonably expect to meet highway competition, in your opinion?

A. Well, that varies also with the character of the traffic.

Q. You mean with reference to whether it is heavily loaded traffic?

A. Usually whether it is traffic that must be trucked for some little distance before it reaches rail and some little distance after it reaches rail, one or the other, or both. [fol. 687] I mean after it leaves the rail.

Q. Now, during the past two years, have you taken full advantage of the increased rates authorized in 162 and 166 and corresponding Florida dockets?

A. To the very fullest extent we know how. I don't mean by that we have not established truck competitive rates or rather reduced the rates on some commodities. Rates are not frozen. They are always in movement to some extent. We have made changes since Ex Parte 162 increase authorized by the Interstate Commerce Commission in just about the same manner we would have made them prior to that or ten years ago.

Q. During the past two years you have made quite a few or have established quite a few truck competitive rates in Florida, have you not?

A. Within the past two years?

Q. Yes.

A. Yes, sir, we have established some. I don't know how many now.

Q. You established some on cement down to Pinellas County points?

A. Yes, sir.

Q. And you have established quite a few on petroleum products, have you not?

A. In the last two years?

Q. Yes, sir.

[fol. 688] A. I thought that freeze order came out about two years ago, sir. We approved quite a few truck competitive rates since then. A few years.

Q. Are you familiar with recent adjustment on road aggregates which resulted in their elimination from this 13 Section proceeding?

A. I am somewhat familiar with that.

Q. That adjustment was voluntarily made by the railroads and approved by the Florida Commission for application in intrastate traffic to become effective on Monday, June 27, of this year, was it not?

A. Did you say inter or intra?

Q. Intra.

A. Intra? I would like to explain——

Q. Well, can you answer the question and then make your explanation, please?

A. Those rates became effective June 27 and we didn't want to put them in. We requested the order be extended as to date until we could get the petition cleared up. The petition as it was filed was in error. It was premature.

Q. The petition as filed was granted, was it not?

A. It was granted and you placed an absolute effective date for the order and we tried to get you to extend that and you declined to.

Q. Will you examine this instrument and identify it, please?

[fol. 689] This is a Florida Railroad and Public Utilities Commission Order No. 1547, Docket No. 1691, dated June 17, 1949.

Q. Is that the order approving that adjustment on road aggregates?

A. It is the order approving the petition and requiring the rates to be published effective June 27.

Mr. Petteway: May we have an identifying number for this, Mr. Commissioner?

Comm. Patterson: It will be 157.

(Exhibit No. 157, Witness Hinnant marked for identification.)

By Mr. Petteway:

Q. Now, will — explain that adjustment, Mr. Hinnant?

A. Explain the adjustment?

Q. Yes, sir.

A. I don't know that I can explain it any more than the

order itself. You've got it in the record now. It shows what it is.

Q. I haven't introduced this, Mr. Hinnant. I have merely identified it.

A. That will be in the record.

Q. Well, will you tell us then what the effect of this adjustment is?

A. The effect of the adjustment is to reduce the rates on road aggregates in Florida in the majority of instances. There are some increases.

Q. There were one or two increases of about one cent?

[fol. 690] A. I think there were more than that and ran up to two or three cents.

Q. Is it true that the general effect of this adjustment is to reduce the rates on road aggregates below the rates which were in effect prior to the increases authorized by the Florida Commission in its Docket 1574?

A. Generally speaking that is true. Some increases, but most of them were reductions.

Q. Do you recall that the Florida Commission in allowing only ten percent increases in road aggregates in its Order 1466-A made the following finding: "The application of the full 20 percent increases to road aggregates would result in loss of revenue to the carriers, rather than an increase. Therefore the emergency increases on road aggregates, carload lots, will be limited to ten percent". Do you recall that finding?

A. Yes, you had that in there.

Q. Now, as I understand your testimony here, the effect of this adjustment will be to wipe out even more than that ten percent which was allowed by the Florida Commission, is that right?

A. To tell the truth, I don't know whether it wipes out quite as much as ten percent or a little more.

Q. Do you recall Mr. Rush's testimony that road aggregates traffic in Florida moves in local intrastate trains and [fol. 691] that those trains are more expensive to operate than the through interstate train?

A. I believe he so testified.

Q. Well, do you recognize any inconsistency in your action in making this voluntary downward adjustment in

rates on road aggregates and the position of the respondents in this proceeding as t their need for additional revenue?

A. I see no particular inaccuracy there.

Q. No inconsistency? You see no inconsistency?

A. No.

Q. I believe your testimony shows that by this adjustment you are giving up something over $700,000 of revenue there, are you not, as compared with the revenue that you would get under the rates which you are seeking here now?

A. That is what it shows.

Mr. Gwathmey: $700,000?

Mr. Petteway: Yes, sir, Mr. Gwathmey, by seven hundred and seventy something thousand dollars.

By Mr. Petteway:

Q. That amounts to more than a third of the increases on the basis of last year's revenue?

A. Yes. It makes it almost necessary to get what increases we can.

Q. It makes it necessary to pass that on to the other shippers, in other words? Are you familiar with your present Florida intrastate rates on petroleum in tank cars?

[fol. 692] A. I am not familiar with that.

Q. Are you familiar with the fact that the carriers are presently engaged in preparing a downward adjustment in petroleum rates?

A. I am with the fact they are looking into it. How far they have gone with it, I do not know.

Mr. Wells: Did you mean intrastate?

Mr. Petteway: Yes.

A. No petition has been filed in Florida so far as I know, yet. I don't know that the petition may be filed. It may be and it may not.

By Mr. Petteway:

Q. Will you turn to page B-3 of your Exhibit No. 12, Line 30, and explain how it is that the present charges of that item are higher than those you are seeking in this proceeding?

A. Off hand, I can't explain it.

Q. That shows, does it not, that the present charges on that item, tin cans moving from Tampa to Florence Villa, carload lots, movement of 24 cars, was something over $400 higher than the charges you are presently seeking?

A. There must be some error in that.

Q. On the same page, please look at lines 49 and 56 and explain why the present charges are the same as those sought in this proceeding?

A. I don't believe I can. It is probably that,—I think it [fol. 693] —I think the Clewiston one,—it seems probably there the maximum increase, four cents, has come into Florida. That is already applicable in Florida and where you reach your maximum, obviously that is under your 20 percent. Obviously we'd get nothing under 25 percent with the same maximum. That must be true with——

Q. Would that same explanation, you don't know, or because of the maximum increase applies, would that same explanation apply to all the other items in your exhibit No. 12 where the present charges equal or exceed thos- sought in this proceeding?

A. No, sir.

Q. Well, please turn to page 4. B-4 and explain why item 6, Tampa to Immokalee, present charges are the same as those sought in this proceeding?

A. Mr. Petteway, I cannot and couldn't possibly keep in mind everything about every movement that is listed in B.

Now, from Tampa to Immokalee, like Tampa to Clewiston, is a good distance an- I imagine in the four cents maximum—that it came into Florida. There is only one instance that I can think of in this exhibit where the explanation given there or my answer would have been, "I don't know" wouldn't apply.

Q. I was trying to get you to say a moment ago. I didn't want to ask you about every one I found.

A. I can tell you only one I can think of where either one [fol. 694] of those situations where I wouldn't give either one of those as my answer to all the questions you might ask of that kind in here, and that is in connection with the rates on phosphate rock from some of the phosphate districts to Jacksonville.

Q. What would your explanation be there?

A. Let's see if I can find that.

Q. It might be on B-15. Would that be on B-15?

A. Some of that is on B-15, I think. I have got some on the Seaboard also. Page B-15 and page B-53.

Q. What is the explanation there?

A. There we published the rate as truck competitive rate basically with an expiration date. When the expiration date came around, we would not extend it, the truck competitive rate, except with the same increase as we had obtained interstate on interstate traffic and that happened, I think, twice and so the rate actually reflects today what the basis rate would be were both the 162 and 166 interstate increases applied.

Q. Do you know of any other situation where that explanation would apply?

A. I don't think there is any other shown in my exhibit and I don't recall any off hand that are not in the exhibit.

Q. Are you familiar with the phosphate movements to dock side in Tampa?

A. Now, if you mean am I familiar with the details of the [fol. 695] movement, I am not. That would be an operating matter.

Q. Well, from a rate standpoint, are you familiar with the traffic moving from the plant there?

A. I am farily familiar with it.

Q. Are you familiar with the phosphate movement to Port Tampa and to South Boca Grande?

A. Fairly so.

Q. Do you know which rates are applied to those movements, the interstate or intrastate?

A. Interstate rates.

Mr. Petteway: That is all.

By Mr. Pettijohn:

Q. Mr. Hinnant, turn to page B-14, of exhibit No. 12, please. Are not the present petroleum rates in Florida intrastate the very rates which the carriers came before the Commission and asked the Commission to prescribe?

A. They are, as I recall it. At least the basic rates are.

Q. Well, aren't the rates themselves the rates that you

asked to prescribe? In other words, didn't the carriers come in at a proceeding and ask the Florida Railroad Commission to reduce the truck competitive rates then in effect so that by adding a 20 percent increase to take care of Ex Parte 162 and a furth-r 20 percent increase to take care of Ex Parte 166, so as to bring the rates as a result of those two revisions practically the same as the truck competitive [fol. 696] rates for distances up to 150 miles?

A. You say as truck competitive or truck rates?

Q. Truck competitive because you adopted truck competitive rates on one time.

A. I am lost there. Bring them up to truck competitive rates?

Q. That is correct.

A. Whose truck competitive? Bring them up to rails' truck competitive rates?

Q. Yes, sir, truck competitive rates fixed way back in 1938.

A. I can't follow that. We did come before this Commission about a year or year and a yalf ago before the Florida Commission about a year or a year and a half ago with a petition to readjust our petroleum rates and it was granted.

Q. Isn't it a fact you came to the Florida Commission just prior to the hearing in Docekt 1574 and made your request so you did not make any specific increase on petroleum products in 1574, which is the companion case to Ex Parte Case 166?

A. You may be entirely correct, Mr. Pettijohn. I just don't recall that.

Q. Have you made any expansions or extensions to prove that the period of four weeks, which is reflected in your exhibit No. 12, represent in any way, shape or manner one thirteenth of the weight or one-thirteenth of the revenue for interstate traffic?

A. In carloads, you mean?

[fol. 697] Q. Yes, sir.

A. I don't know any way I could do that except by going through all of the waybills for the year to test it. Now, I did take a few—I don't recall just what they are now—a few movements where I found record of Coast Line move-

ments as reported to us from your outside people for the year 1948 and looked through the Coast Line terminations for the four weeks' period, test period. This is carload shipments, and found that there it came out fairly even. On blackstrap molasses from Clewiston where we get reports from our own representative, I found that to come out to one of the points, to Tampa, I believe. The movement for the four weeks' period multiplied by 13 was within one car of what we had for the entire year, 1948. One or two others were like that, but I made no other attempt to verify the absolute correctness of 13 times the four weeks' period for carload test shipments.

Q. Even if it came out within one car, it would depend very much on whether the revenue derived from the cars shown in your study multiplied by 13 would produce the revenue for the year. The car itself is meaningless when you discard the distances transported, is it not?

A. We have taker the actual movement here in this four week test period and we have the distance, of course, where the rate is based on distance. Most of them are.

[fol. 698] Q. But you have no place made a study so as to prove by commodities that the number of cars delivered are one-thirteenth of the car deliveries during the year or that the revenue collected during the year or points between which the commodities are transported are typical during the year.

A. Are different?

Q. Are typical?

A. No, because we only picked four week- for our test—that is, the second week in the winter month, second week in the spring month, second week in the summer month and second week in the fall month of 1948 because we believe that would be the most typical period we could take and not burden ourselves over much with all of this detail work.

We had to go through something like 50 thousand pounds to get what is shown in my exhibits B and C.

Mr. Pettijohn: That is all I have.

Comm. Patterson: Any further cross examination?

Mr. Wells: Yes, sir.

By Mr. Wells:

Q. Mr. Hinnant, what is the purpose of this proceeding so far as the Atlantic Coast Line is concerned?

A. To obtain the revenue, additional revenue that we need so bad.

Q. Is it your view that from items 18, 19 and 20 on page 2 of Exhibit 12, that the Atlantic Coast Line will receive any additional revenue from a 15 percent increase on in-
[fol. 699] trastate protective service?

A. I doubt it. I doubt if there is any protective service given in Florida.

Q. You don't know a single car moved intrastate in Florida on which protective service is furnished in 1948, do you?

A. I surely don't.

Q. Will you look at page R-6 of the same exhibit? Where you show an increase in the first three months of 1949 vs. the first months of 1948, 5.35 percent in the percent column in the tons handled by the Coast Line on fertilizer and fertilizer materials. What does that indicate to you?

A. You are talking about the tons handled now?

Q. That is right.

A. It indicates to me that there is that much more fertilizer moved over the Coast Line in the first three months of 1949 than 1948.

Q. Do you know whether that was for fertilizer or fertilizer materials?

A. I would have no way of differentiating that because fertilizer and fertilizer, other than superphosphate, are reported in one group.

Q. And you wouldn't have any idea as to whether that was any change relatively in the interstate and intrastate movements, would you?

A. No.

[fol. 700] Q. Because that is a figure of tons handled within Florida without respect of the characteristic of it?

A. This is tons handled all over the system.

Q. All over the system?

A. That I have on page R-6.

Q. You don't know whether there was an actual decrease with respect to tons handled within Florida?

A. No.

Q. Or actual decrease of tons handled intrastate in Florida of fertilizer and fertilizer materials?

A. No.

Q. Aside from that statistical item, don't you know that most of the fertilizer from the mixing plant in Florida is now handled by motor truck delivery?

A. No, I don't.

Q. You know there is a very large volume of it, don't you?

A. There is and I know all over the sysstem from the small plants that practically all of the shipments of mixed fertilizer is by truck.

Q. Are you familiar with the peculiar sewing existing in the State of Florida?

A. Not too well.

Q. Where did you get an increase of 15 and 23 per cent, how much of the revenue, system-wise on the Coast Line, first three months of 1949 versus the first three months of 1948 on fertilizer and fertilizer materials?

[fol. 701] From what source did I get it?

Q. How did it arise? What caused it to occur?

A. The first increase of 5.35 per cent in the tonnage handled, second, the higher rates from January—well the higher rates throughf the period.

Q. You mean of 1949 vs. comparable——

A. 1949 vs. 1948. And it might have been, it is possible that some of that came from additional increased fertilizer material that moved long distances.

Q. It does not in any sense indicate that the disparity between the interstate level of rates on fertilizer material occasioned by increase of Ex Parte 166 and non-addition of that percentage increase or maximum increase to the intrastate rates within Florida is reflected in that at all, is it?

A. I am not certain that I understand the trend of your question.

Q. Is it your view that the increase in the interstate rate on fertilizer materials and the failure to make the same increase, or Ex Parte 166, on the intrastate fertilizer ma-

terial rate reduced the revenue you are receiving from hauling fertilizer materials in the comparable periods there?

The Witness: Will you read that back?

(The last question was read by the reporter.)

[fol. 702] A. It is my opinion that the failure to obtain the intrastate increase did reduce our revenue on the fertilizer materials.

Q. In what manner?

A. In my opinion, we would have gotten the same or practically the same tonnage of the fertilizer materials to handle and would have gotten higher rates on them.

Q. That is not reflected in any way in the figures to which we have just referred to on sheet R-6, is it?

A. I think perhaps it is. That is why I put this page in there, Mr. Wells. I showed that for the Coast Line as a whole we had a very good increase in our revenue on fertilizer and fertilizer materials for the system.

Q. Well, now will you turn to——

By Comm. Patterson:

Q. Would you mind letting me ask a question? Will you state whether or not the rates on fertilizer and fertilizer materials has been increased in the majority of the states on intrastate traffic, for example, Georgia, North Carolina, South Carolina and Virginia?

A. They have been increased the full amount of interstate increases in North Carolina, South Carolina and Georgia and those increases were in effect in the first three months of 1949.

Q. And are those increases reflected in the 15 and 23 hundredths per cent increase in revenue which you show there?

A. They are.

By Mr. Wells:

Q. Will you turn to sheet R-4, please, and tell us why [fol. 703] with a 22 per cent decline in tonnage handled, May, 1948, under May, 1947, you had a one per cent decline in revenues whereas in June you had a 22 per cent de-

cline in tonnage, but with a five per cent decline in revenue. Do you know what factors entered into that?

A. The only thing I can suggest was differences in the lengths of haul.

Q. And possibly differences in the movement of fertilizer materials as against mixed fertilizer within a state?

A. It wouldn't be altogether within the state. It might be there is more movement of fertilizer materials in June relatively than in May.

Q. But you don't know that?

A. I am not certain.

Q. Now, will you turn please to sheet B-6?

A. Yes, sir.

Q. Do you know whether or not the items on that and the succeeding sheet for deliveries on the Atlantic Coast Line were items of fertilizer or fertilizer materials?

A. It would be impossible for me to say as to each of them. I would think that to the points where there is no fertilizer manufacturing plant, the movement would be more than likely to be mixed fertilizer, although it is not altogether necessary that that be true, but take in this first point, Jacksonville to Alachua, that is probably mixed fertilizer.

[fol. 704] Q. Well, is it your view that the analysis that you have made of the four test weeks showing 146 terminations on the Atlantic Coast Line would indicate that you only had 1898 cars of fertilizer and fertilizer materials terminated at all the stations on the Atlantic Coast Line in Florida during the year 1948?

A. That is an inference that might well be drawn, yes, sir.

Q. That is the assumption you are making by presenting this exhibit, is that right?

A. That is right.

Q. But whether or not the length of haul would be the same on that number of cars during the entire year as represented by the 146 cars there, you have no information whatever on that?

A. Where the length of haul would be the same?

Q. That's right.

A. Well, I don't believe I follow that——

Q. You say, for example, Mr. Hinnant, by using the fig-

ure 146 as the number of cars of fertilizer and fertilizer materials terminating at stations of the Atlantic Coast Line in those four weeks of 1948 indicates to you by assumption that the total termination on stations in the Atlantic Coast Line in the year 1948 would be 13 times that or 1898 cars?

A. That is the inference I would draw from this.

[fol. 705] Q. But you don't know whether the length of haul of the other 16 or 17 hundred cars would be the same as the average of that 146, do you?

A. No, I haven't any idea.

Q. You haven't any idea about that?

A. No, but I assume that when we take a sample like that, spread through the four seasons of the year, with nothing abnormal, so far as I could find, for either of the four weeks period, there must be a pretty true picture of what happens throughout the year.

Q. When is mixed fertilizer used on citrus in Florida?

A. I don't know.

Q. You don't know whether that is the time there would be deliveries of fertilizer from the mixing plant to the citrus grove?

A. No, I would assume that one of those weeks would fit in ther- with at least some degree of accuracy.

Q. Do you know whether that would be the time when the fertilizer would be applied to the celery farms?

A. No, I do not.

Q. You have no information at all as to the actual useage and deliveries and typical weeks in regard to that traffic, do you?

A. I do not.

Q. Mr. Hinnant, in general, is the gross revenue on traf-

[fol. 706] fic within Florida earned on intrastate traffic? About 25 per cent of the gross revenue on traffic happened in Florida.

A. I haven't got those figures before me. The nearest I can come to that is to say that we have figured that Florida intrastate traffic brings in approximately six per cent of our total freight revenues.

Q. You are speaking of the whole system?

A. Whole system.

Q. I am speaking about the traffic handled in Florida?

A. I have made no segregation on that.

Q. If your annual report for 1948 shows that the number of cars of fertilizer and fertilizer materials, commodity class 539 was ten thousand forty-two, in your judgment, would 25 per cent of that be the number of cars handled intrastate within Florida during that year? Or do you know?

A. Are you talking about fertilizer and fertilizer materials?

Q. Yes, sir.

A. I don't believe it would be anything like 25 per cent as intrastate.

Q. Well, let's look at phosphate rock, for example. That is on page B-15. You show at that page a total of 877 cars of phosphate rock terminated at stations on the Atlantic Coast Line. Is it your view that 11,401 or 13 times that figure would be the total number of cars of phosphate delivered at stations on the Coast Line in '48?

[fol. 707] A. It probably would, but let me say something there. We don't include phosphate rock in with fertilizer and fertilizer materials.

Q. I am not talking about that now. I am talking about another figure and I refer you to the fact that the annual report of the Atlantic Coast Line shows that 135,479 cars of phosphate rock were handled by Atlantic Coast Line within the State of Florida for the year 1948. Do you think that consistent with the showing you make there for it as being typical for that class of traffic?

A. I will have to find out first what that figure is you are talking about. Are you including what the annual report shows was handled and delivered in Florida?

A. I am using the figure as shown in the annual report of the cars handled within the State of Florida.

A. Of phosphate rock?

Q. Yes, sir.

A. That includes, of course, all of the port rock, that is going to the port, for movement by vessel beyond and that is not intrastate.

Q. I appreciate that.

A. It originates and terminates as far as rail movement is concerned within the state, but not intrastate, it is not

an intrastate movement and we are not asking it in the increase. Therefore, I did not include any of that in the figures shown on page B-15.

[fol. 708] Q. But what I am trying to get at, Mr. Hinnant, in the absence of any tests made by you to determine the typical nature of what you did put in your exhibit, I am asking whether reference to these other figures in your annual report indicates they are typical or not?

A. I don't think that you can take for certain commodities specific commosities, the figures shown as handled within the State of Flori-a and take a specific percentage of them and that is all the way through, 25 per cent of 20 per cent for this commodity or other commodities and say that would be what we handle intrastate. It is likely to be quite different on each commodity.

Q. As a matter of fact, each commodity, too, as you referred to a minute ago, may be susceptible or more susceptible by movements——

A. According to commodity, distance it moves and whether or not there is long trucking before it reaches the railroad or long trucking after it leaves the railroad.

Q. Will you turn to page B-15, I think it is. Now, you explained to Mr. Petteway a few moments ago that the three items on lines 36, 37 and 38 were occasioned by the fact that there were some rates that you let expire and didn't republish and therefore that the present rates are on the same level as the interstate rate?

[fol. 709] A. You haven't got that quite right. I said they were about to expire and we would only extend the expiration date or republish with a new expiration date based on put-ing into the rate the interstate increase. They did not expire at any time actually.

Q. The rate that was in effect before that time was permitted to expire so that a higher rate is now in effect intrastate, isn't it?

A. It was cancened by the new rate we published. The expiration date did not take effect.

Q. At any rate the rate you used in the computing of present charges for lines 37, 38, 39 on sheet B-15 is at a higher rate than at the time of expiration of Ex Parte 166?

A. I think that is true. In fact, I am sure.

Mr. Petteway: You meant 36, 37 and 38?
Mr. Wells: 36, 37 and 38, thank you.

By Mr. Wells:

Q. Now, there are a great many points throughout your exhibit,—for example on page B-22, lines 2, 3 and five on sulphur,—pardon me, not 2, but lines 3—Line 5. Where the basis sought is exactly the same as the present charges. Do you know what the explanation of that is?

A. Port Tampa to Tampa is virtually a switching charge, is published as a rate, but it is on a per car basis and we obtain, as I recall, authority from that from the Florida [fol. 710] Commission to make the same increase on that per car charge, it is practically the same as Crosstown switching charge between Tampa and Port Tampa, as we did on switching.

Q. Then on lines 2 and 3 on that page, your sought charges are less than the present charges?

A. I haven't the slightest idea how that comes about.

Q. Do you have any knowledge as to how the numerous instances through your exhibit where the present charges and the charges on the basis sought through Ex Parte 166, how that arises?

Exam. Mattingly: He tried to explain to Mr. Petteway once.

Mr. Wells: He explained he knew one situation only, which is the one I just referred to about the phosphate, and he said he didn't know the one item Mr. Petteway asked him about. I am asking about the numerous similar items, if he knows what the explanation is?

A. In some instances like cement from Tampa where it already has the maximum coming in to Florida.

Exam. Mattingly: That is the same, identical explanation he made to Mr. Petteway.

A. There would be no further increase if the percentage had been increased to 25 per cent, because your maximum increase is already there. Now, I don't think it is true with sulphur. You pointed out here on two places where there would be a reduction. I don't believe that is correct.

[fol. 711] I don't believe it could possibly be. But, instances like that, I can't explain. But I just cannot remember all the details of the rates that go into this whole section of the exhibit.

Q. If I understand your exhibit, you don't know what occasioned those situations I asked about. It might have occurred from the thing you explained, but you don't know?

A. It probably did.

Q. Will you turn to page C-16, please. As I understand the purpose of your page C in the C section of your exhibit, do they show comparable movements interstate and intrastate?

A. They show movement of the same commodities interstate and intrastate.

Q. Is there any commodity on ice, other than for ice used by rail lines in providing protective service on interstate service?

A. I doubt very much there is.

Q. If there be any difference in charges interstate or intrastate, those would be paid by the railroads themselved in the performing of other service by the railroad, is that right?

A. That is correct, but let's take that ice, for example, from Lakeland to Belle Glade. There is bound to be a two-line haul. Now, one of those roads at least would get some increased revenue out of it.

[fol. 712] Q. Which would be chargeable against the performing of the protective service for which the shipper pays all the railroads participating in the haul?

A. No, sir, not chargeable to protective service. Nothing additional is collected from the shipper on account of ice.

Q. You didn't try to do that in Ex Parte 166?

A. We tried to get some increases in prices but we don't charge the movement of the ice to the shipper.

Q. In other instance-, you show Mulberry, Florida and Panama City, Florida, as comparable destinations for sulphuric acid. Is there anything comparable about those two destinations? Page C-2, Line 7?

A. No, they are not close together and I stated in Exhibit 11 that usually where we found a shipment of the same commodity to the same destination interstate and intrastate,

that was shown. Other cases, we use some other destination in Florida, generally one that was in the same vicinity. Now, that seems to be an exception.

Q. Then is the title sheet, page C-1 in error where you say "moving to same or comparable Florida destinations"?

A. No, I don't think it is in error.

Q. Well, I understood you to say a minute ago you picked some other Florida destination, regardless of whether it was comparable.

A. I said generally they were in the same vicinity. This [fol. 713] one here on the sulphuric acid, Panama City and Mulberry are not comparable. They are both in Florida and both use sulphuric acid.

Q. In one case fertilizer and in the other, for making paper, is that right?

A. That is right.

Q. And in both cases, the movement there would be in interstate commerce, wouldn't it?

A. From where to where?

Q. The sulphuric acid comes from East Tampa. Isn't that an import?

A. No, sir.

Q. Is it made there?

A. Made ther-, yes, sir.

Q. You wouldn't expect a shipment from Mobile to Mulberry if the sulphuric acid was available at Tampa?

A. Some times it moves for quite long distances.

Q. Because it is not available at closer points?

A. It probably is.

Q. On page C-28 you have shown some potash moving from Miami to some point in Florida. Is there any potash produced in Miami?

A. Of course, there isn't.

Q. That would come in by ship probably from some other source, would it?

[fol. 714] A. This was not an import as far as I know. It certainly was not an import movement.

Q. It would be interstate at any rate?

A. It came into Miami by rail or by water and was stored there and moved ou-.

Q. The same thing would be true of the castor pomace movement. That has been an accidental movement or move-

ment where the commodity had originated in New Jersey, wouldn't it?

A. Yes, I think most of the castor pomace is imported through Jersey ports.

Q. Well, Mr. Hinnant, on page C-13 and 14 and 15 you show a number of individual shipments intrastate from various points in Florida to points in Florida and interstate to various points in Florida under the caption fertilizer and fertilizer materials?

A. Yes, sir.

Q. Can you tell me whether or not there is any item under your interstate movement of other than fertilizer materials not available at any point within Florida?

A. If you will take the first item under fertilizer and fertilizer materials, shown on Page C-13, line 18——

Q. Yes, sir.

A. Valdosta, Georgia, to Alachua, Florida, 102 miles, that is undoubtedly mixed fertilizer.

Q. You are sure it is not fertilizer materials?

A. I don't know of any fertilizer materials shipped from [fol. 715] Valdosta.

Q. But you don't know what that particular shipment was you showed?

A. No, and I don't know what is moved from Jacksonville to Alachua, fertilizer or fertilizer materials. It is just as likely to be fertilizer or fertilizer materials from one as the other.

Q. You don't know if any of the comparable items you show on those sheets to which I have just referred are competitive to each other in movement or not?

A. I only know they are under list as reported to the Interstate Commerce Commission as fertilizer and fertilizer materials.

Q. On Page 57 of your Exhibit 11,—pardon me. It is page 47, Mr. Hinnant. You make the statement that the rates within Florida were revised effective January 21, 1941 on the same basis as was observed elsewhere in the South except to the Florida East Coast points and to points within the East Coast territory that you have described and that the Florida East Coast rate included in Ex Parte 123.

A. That East Coast Rate did not, but The Coast Line and Seaboard stations, I believe it did.

Q. There is some difference between classed scale shown on sheet H-4, I believe it is of your exhibit 12. At any rate, the fertilizer rates, between the lower East Coast destina-
[fol. 716] tions on the Seaboard and the Coast Line and the destinations on the Florida East Coast as the 123 increases, is that true?

A. That is right, locally on the Florida East Coast.

Q. Now, do you know of any reason why if a shipment of fertilizer or fertilizer materials were going to be made from Jacksonville to West Palm Beach, for example, why,—and in this proceeding this has been excluded by motion of the carriers, any increase so far as the Florida East Coast local scale is concerned. Do you know of any reason that shipper would move at a higher rate by the Seaboard?

A. From Jacksonville?

Q. Yes.

A. It wouldn't.

Q. And do you know of any reason why—take a point ten miles out from Jacksonville,—where the combination would apply under the rates for the movement when destined to a point on the Florida East Coast instead of the Florida East Coast scale, do you know any reason why that shipper should have to pay a 25 percent increase when the shipper in Jacksonville shipping local on the Florida East Coast would not have to pay any increase?

A. You said something in the first part of that question about a combination. There is no combination.

Q. I am thinking about joint haul.

Q. You are thinking about combination haul?

[fol. 717] Q. Yes, sir.

A. You are asking why a man shipping from this point on the Seaboard——

Q. With a 10 mile haul to get to the Florida East Coast.

A. Should pay 25 percent higher? That is rather hard to answer, sir. If it were interstate traffic there would be no undue discrimination. There would be discrimination, but not undue because both factors are not in the hands of the one road or two roads together.

Q. Here are the same roads that are proposing that adjustment. So suppose you go ahead with the explanation of the question I asked.

A. No, Seaboard Air Line has control of the rates from

points on its line. It has no control over rates of the Florida East Coast. There may be a situation or set-up whereby the Seaboard Air line would have to take some action to meet that competition set up by the Florida East Coast.

Q. You will be perfectly frank, won't you Mr. Hinnant, in agreeing that situation would be intolerable?

A. I rather think it would be.

Mr. Wells: That's all.

By Mr. Overton:

Q. Mr. Hinnant, will you turn to section D?

Comm. Patterson: Let's take a recess of ten minutes.

(A recess was taken for ten minutes.)

[fol. 718] By Mr. Overton:

Q. Mr. Hinnant, the comparison shown on page D-2 and D-3 of your exhibit No. 12, Line A, if I understand correctly, you increased the rates which were effective in Florida in January of the year 1929, ten percent to reflect an increase authorized by the Florida Commission about 1938. Is that correct?

A. That is right.

Q. And then you have used that line A as the basis comparison for the present rate, line D?

A. That's right.

Q. The Florida Commission never did have before it the scales shown in Line A to consider a proposal, a increase on those rates of ten percent?

A. The rates were not in effect when that 123 increase came along. They had been superceded by 1314, 494.

Q. So they were never considered by any regulatory body?

A. It is in comparison with the rate level as of 1929, put up to the rate level of 1938. The rate level of '29 was actually in effect for many years.

Q. The scales shown on page D-14 to D-16 inclusive, of exhibit No. 11, opposite the letter "B" reflect as I understand it your porposed rates. The explanation is on page D-17?

A. That is what I am looking at. That is correct.

Q. Do you propose that the rates shown opposite Line B applied on classes 1 to 7 on traffic governed by the classification and the exceptions?

[fol. 719] A. Page D-17—Page D-13 through D-17 run only to the docket 13,494 system of rates and that system of rates is now applicable only in connection with exceptions ratings.

Q. Then your explanation on page 17 of the Exhibit 11, page D-17, should be corrected to read that B is the level governed by exceptions ratings only?

A. Well, I have no objection to that being shown on page 17, but I think it is inherent from the title page when it says Docket 13,494, intrastate class rate docket 494, system of class rates has no application. Now in connection with the rates to apply on commodities where the rating on the commodities was obtained from the classification proper.

Q. Well, now, am I correct in assuming then that the rates shown on page D-19 and D-20, column D, are the rates proposed by the carriers in this proceeding? Note 3. On page D-16.

A. That is explained, I think, very fully in the Note 3. The column D rates shown on page D-19 and D-20 are those which we seek to have applied in alternation with column C rates in connection with the classification pro ratings.

Q. Now, with reference to that alternation, sir, I intentionally did not refer to Column C because I hoped we'd shorten this. Isn't it true that the column C rates shown on page D-19 and D-20 by note 3 reference to that as proposed to be alternated with the column D rates on those pages exceeds the column D rates in every single instance?

[fol. 720] A. As shown on page D-19 and D-20, it does. But as I explained somewhere in my testimony——

Q. We will reach that point, sir.

A. In Exhibit 11 between North Florida points and South Florida points there are instances where rates that correspond with Column C on page D-19 and D-20 would be lower than the Column D accordingly.

Q. For a moment, to shorten this discussion as to where it might occur within Florida and we will disregard this for the purpose of this question and limit the application of your proposed basis of rates to hauls wholly within Peninsular Florida, which means Florida south of Seaboard Air

Line from Jacksonville to Chattahoochee, the territory in which the arbitrary applies for the total haul. In that territory, Column D would always be the applicable rates?

A. On classes one through seven inclusive, governed by straight classification, column D would always be the rate in Florida.

Q. Isn't it true also, the rate you are porposing in South Florida is governed by the exceptions ratings?

A. That is correct.

Q. You're proposing exactly the same basis on both classes, one through seven? On interstate traffic in the South and on intrastate traffic between points in North Florida non-arbitrary territory, is this a correct statement? [fol. 721] Since June 30, 1946, the rates governed by the classification ratings have been reduced ten percent, increased 20 percent and under your proposal would be increased 25 percent?

A. As governed by straight Southern classification rate.

Q. That is correct. Those rates?

A. Your statement is correct, except in one respect. They were reduced ten percent in the June 30, 1946 level, increased 22 and one-half percent and increased 25 percent.

Q. I thought that is what I said. Now, under your proposal as set out in Column D, in page D-19 and 20, on rates in the Florida Peninsula you would propose that the Florida rates, since June 30, would be increased 20 percent and 25 percent. Isn't that correct?

A. On classes 1 through 7, yes.

Q. Therefore you are here proposing and requesting the Interstate Commerce Commission to apply greater increases in South Florida than in any other place in the South?

A. I don't—yes, we are and I have gone into that rather carefully in Exhibit 11 and explained why we took the Florida arbitraries off class 1 through 7 in connection with docket 13,494.

Q. Regardless of that explanation, sir, it is true that although the docket 28300 order and the order in Ex Parte 162 issued by the Interstate Commerce Commission with reference to that 28300 interim adjustment required that the effective rate as of that date be reduced ten percent

[fol. 722] and increased 22 and one-half percent in South Florida. That was not done, isn't that correct?

A. The Interstate Commerce Commission order in 28300 did not pertain to intrastate rates.

Q. I agree, but the order did read that you should reduce the going rates ten percent and increase the result of that reduction 22 and one-half percent?

A. That is correct.

Q. And that is what you did in North Florida?

A. Let me go a little farther; there were other instances where carriers of railroads had in their interstate adjustments reduced the class rates to meet truck competition and there the carriers obtained authority to make no reduction on the interim 28300. I have in mind, I believe, rates from Owensboro, Kentucky, to point on the border of the Ohio River.

Q. Chicago-Indianapolis is another, but we are talking about Florida. Here is the point I was trying to make where a similar situation occurred in connection with interstate rates, petition was made to the Interstate Commerce Commission to accept those rates. Now, intrastate we didn't have to make petition to the Florida Commission or to the Interstate Commerce Commission to accept those rates. We went ahead and did what we were trying to do interstate—and the order of the Florida Commission which [fol. 723] under attack in the 14 section proceeding required that you treat South Florida in exactly the same manner as you treated North Florida, isn't that correct?

A. They required that we waive the arbitrary in connection with the first seven classes, whether they were reduced or not.

Q. Mr. Hinnant, of course, the order speaks for itself, and I believe it is a part of this record.

Mr. Petteway: 1466-C. I asked leave to furnish that.

By Mr. Overton:

Q. The order make no reference to waiving the arbitraries. It prescribed a treatment of classes 1 to 7 then effective and provides for increasing them, isn't that correct?

A. I will not try to argue with you.

Q. Apart from all discussion, the final result, I believe you admitted you are proposing to increase rates to classes 1 to 7 governed by the classification ratings, more in percentage and more in cents per hundred pounds in North Florida than you have increased those rates throughout the Southeast?

A. True, and trying to make those rates the same as we have interstate in South Florida today.

Q. Mr. Hinnant, on your Section B of Exhibit No. 11, am I correct in assuming that——

Q. What page?

A. Entire section B,

[fol. 724] Comm. Patterson: That is in Exhibit 12.

By Mr. Overton:

Q. I misspoke. Exhibit 12, I should have referred to. Am I correct in assuming that the columns headed present charges throughout that section reflect not the charges actually collected on those particular movements there set out, but reflect the charges which would apply if those shipments had moved today?

A. You are right.

Q. And column basis sought purports to show the charges if the increases you are here seeking are granted?

A. Correct. We wanted to get this so as to reflect the charges as of today, not as of the time the shipment moved and make comparison with the rates we are asking the Interstate Commerce — to prescribe.

Q. You have no assurance as to the portions of those movements or that some of those movements would even move on the rates today; isn't that correct?

A. I lost the word.

(The last question was read back by the reporter.)

A. Well, we have no assurance, of course, that any traffic we handled last year, we will handle again. Usually we find that we do handle it again, but we have no assurance that we are going to get even the rates that were in effect last year. The first part of last year. The same movements over again. We constantly find that we lose certain traffic

[fol. 725] to trucks. Sometimes we get that traffic back without changing the rate.

Q. And for example, on page B-4, line 24, you show 12 cars of cement moving from Tampa to St. Petersburg and if you will accept my computations, you show the present charges on the basis of 19.2 rate.

A. That is page 4, line 24?

A. Page B-4, line 24.

A. Now, what was the last observation?

Q. That you have shown the present charges on the basis of 1-.2 per hundred pound rate?

A. I can't tell without figuring it out. You say if is right. I accept your word.

Q. As a matter of fact, that rate today is ten cents per hundred pounds, isn't it?

A. There was a truck competitive rate put in on cement from Tampa to St. Petersburg.

Q. And even that truck competitive rate has not been able to obtain any of the package cement. It is still on the highway isn't it?

A. I haven't seen the reports, sir.

Q. So that you have no assurance that the basis sought would move this same relative traffic either?

A. The same cement?

Q. Any of the commodities of Section B?

[fol. 726] A. No, we believe it would, but we don't have any assurance.

Q. I am trying not to repeat or repeat similar situations, but I would ask you to turn to page C-5. And in your comparisons of intrastate and interstate movement, with your knowledge of the State of Florida, would you agree with me that the canned goods movement there shown are probably one hundred percent citrus?

A. I will make a slight reduction in the one hundred percent. Yukon origin on line 25 is probably not citrus, but some canned goods owned by the Navy, isn't it. It would probably be surplus property moving down there from Yukon.

Q. Generally that is the movement there shown.

A. I'd say perhaps 90 percent of that is canned goods. I would think from Jacksonville,—I see two things from Jack-

sonville. It is quite likely to be other kinds of canned goods.

Q. And the interstate movements from these northern and out-state origins would be canned vegetables and canned fruit not produced in commercial quantity for canning in the State of Florida?

A. It would probably be. None of this interstate movement into Florida is canned citrus fruit. There are all kinds of canned goods, table sauces, canned vegetables, pickles also usually come in that catagory. Now, I'd say that probably 90 percent of the movements shown as intra-[fol. 727] state would be citrus and I believe that is correct, but there are canned vegetables produced in Florida. There is a canned pork and beans production in Florida and that is from Tampa. I notice two movements from Tampa. They may have been pork and beans, vegetables, citrus fruit.

Q. Tampa produced a substantial amount of canned citrus and nothing else in canned goods?

A. I said they produce canned pork and beans. I have had claims on shipments from there.

Q. It is news to me if they produce it, but I won't argue with you. On page C-6 and C-7, you make comparisons of movements of cement from Tampa as compared with out-state points.

You are familiar with the fact that in the year 1948, particularly in the West Coast of Florida and on the East Coast of Florida, this was a tremendous building program?

A. 1948?

Q. Yes.

A. Yes, there was good building.

Q. And the Tampa mill literally could not produce cement to supply its own area?

A. That is probably true.

Q. And I looked very carefully through your list, but apparently you didn't have the right weeks. That hunger for cement in 1948 was so bad that they reached clear to New England for cement, isn't that correct?

[fol. 728] A. I will let you make the statement.

Q. Under the normal conditions and normal use, a majority of the cement will come from Tampa, will it not?

A. I don't think Tampa has ever been able to produce all the cement that is used in Florida. There's always been a large movement of cement outside of Florida into Florida.

Q. On that, there is one other point I'd like to ask you about. At the present time if there is discrimination in the intrastate adjustment as against the interstate adjustment applicable to cement, who is being discriminated against? The Florida receiver or the shipper outside the state?

A. I'd say the one that pays the freight.

Q. And that is the Florida receiver under the present conditions, isn't it?

A. I really don't know how cement is sold, whether it is sold f.o.b origin or destination.

Q. I believe this record shows what the mill price is and the buyer pays the freight rate.

A. That is true since the cement decision of the Supreme Court, or whatever—. Regardless of who pays the freight, if it is the shipper who pays the freight, and he purchases from the point that is favored with the lower rate, the manufacturer of the cement at the prejudiced point is going to feel that just as much as if he had himself paid for it.

Q. On page O-5 of your exhibit No. 12, you make compari- [fol. 729] son of the common brick scales in Florida with the interstate scales. Isn't it true that as to the common brick rates interstate in the South, since in the Commission's decision in Ex Parte 166 you have readjusted the common brick rates so that generally the increase since June 30, 1946, is materially less than the increase authorized by the Interstate Commerce Commission?

A. The only adjustments I recall on the common bricks are that we reestablished the relationship of 80 percent to the uniform brick price rates.

Q. And as shown in Exhibit No. 145 that resulted in a materially less increase than authorized by the Interstate Commerce Commission?

A. I don't have the exhibit before me, but it will speak for itself.

Q. Mr. Hinnant, on page C-17 of your Exhibit 12, C-17 and C-18, you compare some intrastate movements of lime with some interstate movements of lime. I note under the interstate column a number of movements from Ohio points. Are you familiar with the fact that the movement of lime from those Ohio points is almost entirely builders' finishing lime which is not produced in Florida?

A. The movement of lime from Ohio is practically one

hundred percent a much higher grade of lime than is produced within the South, Florida or elsewhere in the South. [fol. 730] Q. I notice you compare, or list, rather, interstate shipments of lime on page C-18, from Keystone and Longview, Alabama, to Orlando, Florida, as compared with a movement from Jacksonville. From the Alabama producing points to the South Florida destinations, except points intermediate to St. Petersburg, Florida and Clearwater, Florida, your interstate basis of rates is a combination of proportionals on Jacksonville, Florida. Isn't that correct?

A. Right.

Q. And materially higher than the Southern lime scale?

A. Correct.

Q. And materially higher than the scale prescribed by the Commission from those same origin points from St. Petersburg and Clearwater, Florida?

A. Higher than that level, yes.

Q. So if there is any discrimination, it is in the rate adjustment and not in this small increase of five percent. Isn't that correct?

A. The Florida rates on lime are so vastly different from interstate rates that it is hard to say who is discriminated against in the basic rate. What we are asking for here is the additional five percent revenue.

Q. I have studied your exhibit 12, Section Q, Mr. Hinnant. Although I could find no section of the text referring to it in Exhibit 11, and I only have this one question to ask of [fol. 731] you with reference to the column headed G, showing the computation of the freight revenue per mile of road in Florida vs. the entire system. I am correct, am I not, in assuming that the basis for that computation was an assignment of Florida of revenue passed on the mileage haul in Florida?

A. That is *ture* to the extent that the movement was interstate and there had to be alloaction.

Q. I should have made that additional classification in my question, sir. My question is whether the interstate revenue is assigned to Florida on the basis of a straight mileage prorate?

A. Yes, it is. My I say on that point that nearly as I can determine from study of our recoreds, somewhere between

70 and 75 percent of the tonnage which originates in Florida terminates in Florida so far as the rail haul is concerned.

Q. You make that statement, Mr. Hinnant as a result of a study, do you?

A. I say from my observation. I have made considerable study of it. I don't have it here.

Q. Have you studied the results of a waybill analysis being conducted by the Commission, and particularly quarterly, determining for state by state for 1947 and '48?

A. I have made some analysis of some of them that have come out and I am not willing to rely on them in the slightest.

Q. They would indicate a different percentage, would [fol. 732] they not, Mr. Hinnant?

A. They indicate, the last I saw, indicated the percentage of 68 in Florida as originating and terminating in the State of Florida.

Q. That was for all commodities or lumbers?

A. All commodities.

Q. And that was the third quarter of 1947?

A. I don't recall now which quarter it was for, but I said my observation, it ran from 70 to 75 percent. The Commission figures, as I recall it, showed 68 or 68 and a fraction.

Q. For one quarter?

A. Yes.

Q. And if you total it for the year, I think you will find a difference, sir, but that is not part of this record.

Mr. Overton: I believe that completes my cross examination.

Mr. Maurer: I have just a few questions.

By Mr. Maurer:

Q. Would you mind telling me how you arrived at the rates that are shown in Section 12—Section C, rather, of your Exhibit 12 as to intrastate traffic?

A. How I arrived at the rates?

Q. At the rates shown under Column five? Perhaps if I ask another question it might simplify it. Did you take the actual rates that were charged or from your waybill analy-

sis? Did you merely fill in the rates that would apply as-
[fol. 733] suming that the traffic was intrastate traffic?

A. Perhaps it would have been better if it showed at the bottom of each page from C-2 through C-35 that the explanation of reference marks A and B is shown on page C-36. We use the present intrastate Florida rate.

Q. Paying no attention whatever then to whether or not the traffic actually went beyond the point shown here?

A. Wait a minute.

Q. For example, turn to page C-5. And while we have discussed already something relating to the canned goods movement, can you tell me whether that traffic actually stayed in Jacksonville or whether it was transit traffic that was stored in Jacksonville and later moved out of Jacksonville at the through interstate rate from point of origin?

A. We have a storage for canned goods at Jacksonville, and it is possible some of them, some of this may have moved, possibly some may have moved out under transit—possibly none may have moved out under transit. I have not looked up the record to find out.

Q. And if any of it moved out on transit to points beyond Florida, then these would not be the applicable rates, would they?

A. They would not be the rates that would be finally assessed. They are the rates that would be charged on the first inbound movement.

[fol. 734] Q. Now still in connection with these canned goods, the movement from Dade City to Pensacola by the Atlantic Coast Line, that also is an interstate route, isn't it, Mr. Hinnant?

A. By the Coast Line, it is. Just a minute. Well, anyway, this section B doesn't show the route movement, but it was intrastate. It went intrastate route. We eliminated all that. We showed movement by an interstate route between South Florida and West Florida.

Q. Are we to understand then that anything from the Atlantic Coast Line in Florida moving into West Florida is not included but the shipments are those of other lines?

A. Where you find in Section B or Section C for the intrastate movement any commodity moving from Chattahoochee or west thereof to a point in East or South Florida, or

in the reverse direction, according to the billing that we had, when we listed the shipment, the movement was by intrastate route.

Q. Mr. Hinnant, on Sheet 12, of your Exhibit, you show——

A. What letter of the page?

Q. C-12 of your Exhibit 12, you show creosote oil. Did you make any investigation to determine whether or not that creosote oil was actually imported creosote oil moving to Gainesville and was not intrastate oil at all?

A. I did not. I cautioned our commerce Department [fol. 735] which prepared this under my direction to throw out as intrastate any shipment that could be identified without going back and making a search. That is, identified from the delivery freight bill. As coming in to a Florida port by water and moving out on the inferstate rate and I asked at least two times if they had been careful to do that and I was informed they were very careful about it.

Q. Isn't the American Lumber and Creosoting plant at Gainesville located on the Atlantic Coast Line Railroad?

A. It is.

Q. Wouldn't movement from Jacksonville to Gainesville be local to Coast Line on traffic destined to that plant?

A. Practically so.

Q. Do you know of any creosote oil that is manufactured at Jacksonville?

A. I do not.

Q. As to the next item, cross ties, did you make any investigation to determine whether or not those cross ties were moving to Jacksonville for creosoting and reshipment beyond?

A. No, I did not.

Q. You know, of course, that the plant of Eppinger & Russell draws in cross ties to its Jacksonville plant and reships to interstate points on a transit basis, do you know?

A. I think I do, whether from every one of these points, I [fol. 736] am not sure.

Q. They draw pretty generally from all points in the state?

A. I think they do.

Q. It is quite likely, therefore, in rerating this traffic you

overlooked the fact some of this traffic could have been destined beyond and has no place in the exhibit?

A. Some could, but I have been advised by Eppinger-Russell that they some times find on this movement from Florida origin into Jacksonville and reshipment beyond on the state that it pays them to use the intrastate rate in and the local rate out and not use transit.

Q. On Sheet 14 and 15—I will skip that. Mr. Wells covered that. On page C-28 of your Exhibit No. 12, you show the movement of pulpwood from various points to Fernandina, Florida, as compared with in the interstate movement of pulpwood to Fernandina. Is that correct?

A. That is correct.

Q. What rate do you show from Lanier, Georgia, to Fernandina, Florida?

A. I show a rate of 396 prefixed by the letter "u". Let's see what the letter "u" means. That is rate per unit of 168 feet.

Q. And that is for a distance of 150 miles, is it not?

A. That is right.

[fol. 737] Q. And rates from Longwood, Florida, to Fernandina, according to you- exhibit, for 135 miles, the present rate is 535.8 cents per unit. Is that correct.

A. Correct.

Q. In other words, the rate for identical distances from a Georgia point on an interstate shipment is substantially lower than the rate you show for intrastate movement from Longwood, Florida?

A. It is and should be.

Q. Why?

A. Movements from Lanier to Fernandina are single line. The line bringing that in on a very low rate obtains the outgoing haul. Longwood is a point on the Coast. When we handle we have no opportunity to get outbound business.

Q. You don't participate in outbound business to Fernandina?

A. That is correct.

Q. To no extent whatsoever?

A. We might get something that moves to local points on the Coast Line but that is all. No common points.

Q. Does that apply to the business of the Rayonier Corporation and Container Corporation of America?

A. I think so.

Q. You get no business from those points to common points?

A. So far as I know, we do not.

Mr. Maurer: If you will just bear with me a moment. I [fol. 738] am culling out a lot of stuff as we go along.

Mr. Overton: While Mr. Maurer is checking, I crossed this off my notes because I talked to Mr. Hinnant about it and I wonder if I could just ask one question?

Comm. Patterson: All right.

By Mr. Overton:

Q. Mr. Hinnant, with reference to the rates shown under Column B on page D-22 and 23 of Exhibit No. 12, under the 8, 10 and 12 class. Mr. Hinnant, I believe I suggested to you that a check by me indicated that those rates were apparently erroneous and suggested that I request you to recheck them and if they were wrong, you would ask the privilege of filing a correct page to this exhibit, or corrections for the exhibit, whichever way you chose. Will you undertake to do that for us?

A. Gladly. I think they are right, but if there is any error in it, I want to get it correct.

Mr. Overton:

Q. That is why I checked them out of cross examination. I think they are wrong.

A. That is 8th class under column B?

Q. For the 8th class, 10 and 12th class.

A. For 8, 10 and 12?

Q. Correct, sir.

Mr. Overton: That's all.

By Mr. Maurer:

Q. Mr. Hinnant, will you please turn to section G, the section dealing with the rates on pulpwood. On page 2 and [fol. 739] 3 of Section G, do you make some comparison with the rates on sand and gravel, etc.?

A. Yes, sir.

Q. Are those rates that are in effect today under this latest compromise that you discussed?

A. Yes, sir. Well, we don't have interstate rates in effect on compromise basis yet on Florida rates.

Q. I understood that whether in effect or not of these rates that you and the receivers or shippers have agreed upon as the new rates on road aggregates.

A. They are not and I would like to explain why I have got them at the present interstate level. I don't—that is—I didn't know until Saturday before I left here that these rates would have to go in in Florida, effective the 27th, nor did the publishing agent. I made this statement up a long time back and I couldn't change it on that short notice. I had to leave Sunday and even if I had known it, I would have compared it with *it with* D 295 because that is even lower than the commission found to be reasonable for sand and gravel and crushed stone in the docket No. 17517 scale.

Q. But it is not the scale of rates that the shippers and carriers agreed upon as being necessary to hold this traffic to the rails, is that correct?

A. As I tried to say a while ago in answer to, I believe, Mr. Petteway's question, the filing of the petition to amend [fol. 740] road aggregates with the Florida Commission was wholly premature. The program was to find out first if the different state Commissions would authorize the changes to that scale and if they did, put it in effect interstate and intrastate all over the state at one time. Now, filing that petition with the Florida Commission was a mistake in the way it was filed, at least.

Q. That scale is substantially lower than the rates you show in this exhibit?

A. Somewhat lower than that. I don't have in my mind how much lower. I do know this: That there are some points in that new scale where the rates are higher than they were in Florida before June 27.

Q. Mr. Hinnant, I notice on sheet G-4 of your exhibit No. 12 you make reference to Interstate Commerce Commission Docket No. 14883.

A. Which page, please?

Q. Sheet G-4. Do you know of any pulpwood that moves on that scale?

A. I understand there's still some rates within eastern trunk line that do move on that scale. Practically all of them in the East have been reduced to what is known as the Bailey scale, which is about 70 percent higher than the Roanoke Rapids.

Q. Isn't it a fact that docket 14883 applies in the same [fol. 741] territory as Bailey scale applies in?

A. 14883 scale was prescribed as I recall from points in Maryland, District of Columbia, and Delaware, and Pennsylvania and West Virginia. Points like Lute and Piedmont, West Virginia, York, Pennsylvania and so forth, adopted rather generally by the eastern road for application elsewhere throughout trunk line territory.

Q. Generally speaking, hasn't that scale been superceded by the so-called Bailey scale prescribed in the West Virginia case?

A. Generally. I thought I said so.

Q. Isn't it a fact that the Bailey scale provides for single line application and joint line application with the addition of half a cent in the basic scale, which has now become about one cent?

A. I believe it is a joint line and a single line scale different from the Bailey scale.

Q. But the Roanoke Rapids does not apply in any instance as a joint line scale, does it?

A. No.

Q. Now, the Atlantic Coast Line Railroad has applied the Roanoke Rapids wood scale to Jacksonville, Florida. Is that correct?

A. That is with the understanding that we will get the proper ratio of outbound tonnage of the manufactured [fol. 742] product.

Q. Do you recall when that was established?

A. Do I recall when it was established?

Q. Yes.

A. Shortly after the Florida Commission had required the application of the Roanoke Rapids scale as increased under Florida Commission's order to correspond to Ex Parte 162, 163 to Palatka, Florida, Coast Line origin.

Q. After the Florida Commission had issued its order in the corresponding 166 case was it not?

A. It was after 166-S. I think it was before 166-C.

By Mr. Petteway:

Q. You mean 1466-A, B and C.

By Mr. Maurer:

Q. Isn't it a fact that Atlantic Coast Line Railroad voluntarily established the Roanoke Rapids wood scale to Jacksonville on exactly the same basis that it applied to Jacksonville via the Seaboard Air Line Railroad?

A. That is applied via the Seaboard?

Q. Yes.

A. That is correct.

Q. And that was after the commission had issued its decision in the Florida counterpart of 166, was it not?

A. After it issued its decision in the Florida counterpart of 166 interim decision. I don't think it was after the counterpart of the final 166.

[fol. 743] Q. Well, you made no attempt to put in the interstate basis to Jacksonville, did you?

A. No.

Q. You put in the same level that was applicable to other paper mills in Florida, known as Roanoke Rapids wood scale, when for single line application?

A. With the distinction and understanding we would obtain the outbound hauls of the products manufactured from that woodpulp.

Q. Isn't that the same understanding you had with all the pulp mills to which you voluntarily established this scale of rates?

A. Where voluntarily established, but not where the Florida Commission ordered it.

Q. And you have no transit provision in connection with these rates or the rates to points where you establish them, based on so-called gentlemen's agreements, do you?

A. We sometimes have the specific transit arrangements on it. Other times, we don't. For example, Brunswick, Georgia. From interstate origins some of the rates are not published subject to specific transit rules and regulations. Others are.

Q. Well, do you know whether or not any of the mills in East Florida have specific transit rules applicable on the movement of pulpwood to these mills?

[fol. 744] A. East Florida?

Q. East Florida, yes, sir. I mean the Fernandina mill, Jacksonville mill or Hudson mill?

A. No, until the Florida Commission issued its order as to Palatka. There was transit in connection with the Coast Line, voluntarily established rates to Palatka.

Q. Did those rates ever go into effect?

A. Yes, sir.

Q. But the Seaboard or Southern have never put them into Jacksonville or Fernandina as far as you know, have they?

A. The Seaboard has never put in transit rules to Fernandina, or Jacksonville. Southern Railway has never put into Jacksonville. If the Southern has any published rates to Fernandina, I don't know it.

Q. They have combination rates to Fernandina?

A. Combination, yes.

Q. I just have one other section here.

Mr. Maurer: It probably wouldn't take me over two or three minutes if you want me to go ahead?

Comm. Patterson: Go ahead.

By Mr. Maurer:

Q. Mr. Hinnant, in your exhibit 12, on page B-8, you show some rates on lime in bulk from southern points to Southern Florida destinations. I have made a quick computation and find that the average weight of the 11 shown there is something over 69,000 pounds per car. Do you [fol. 745] agree, or would you accept that figure?

A. Yes, it looks like it.

Q. Just in round figures. It is certainly over 60,000 pounds, isn't it?

A. Yes.

Q. Will you turn to your exhibit 12, pages O-7 and O-8. That exhibit, if I understand it, compares the Florida intrastate rates on lime with the interstate scale applicable in Southern Territory, is that correct?

A. With the interstate scale, subject to minimum weight of 38,000 pounds.

Q. Does not the Southern scale also carry a minimum weight of 50,000 pounds?

A. It does with rates about 80 percent of the scale rates which are subject to the 30,000 minimum.

Q. Doesn't your exhibit indicate that the average weight on lime in Florida is in excess of 69,000 pounds?

A. These that we have on the Coast Line deliveries do. Over 50,000 pounds average on the East Coast. Now let's see what the Seaboard's got. Yes, they are higher on the Seaboard also.

Q. Wouldn't the proper comparison then be with the rates based upon the 50,000 southern scale minimum rates?

A. It is very easy to make that comparison if you take 80 percent of the rates shown on page O-7 and O-8 as the [fol. 746] *the* interstate rates. I mentioned that in my testimony in Exhibit 11.

Q. Isn't it a fact by taking 80 percent of the rates shown under 30,000 pound minimum that if you take a percent of those rates you will arrive at rates that are generally lower than the present rates in Florida?

A. You probably would on that comparison. That is, in North Flroida. But, at least, there would be some arbitrary added for South Florida. The U. S. Commission in the Dann-Gerow authorized 25 percent arbitrary for the South Florida haul.

Q. Perhaps I misunderstood the purpose of this comparison. I thought it was made to indicate the low level the Florida rates had.

A. It was made to indicate that what we are asking the Interstate Commerce Commission to give us here will not put the rates above comparable rates interstate.

Q. Would you be willing to give Florida the interstate scale of rates on lime based on a 50,000 minimum?

A. We have seven times contacted the lime producers in Florida with the proposition to substitute for the present Florida lime scale, the Southern Lime Scale plus the arbitrary and they don't want it. At least each time we have contacted them, they have not wanted to let go their minimum weight of 24,000 pounds. They are very anxious to get the reduction to 60,000 minimum, but they are not willing to take the increase on 24,000 and the increase from [fol. 747] 24,000 to 30,000.

Q. Actually, the issue applied to Southern scale with

minimum of 50,000 pounds. You'd bring a reduction from the Florida rate?

A. Probably would; I don't know how far that would be—how far that would go if we had the arbitrary in South Florida.

By Mr. Petteway:

Q. I have one question. On page C-29 of your exhibit, Column 1, lines 18 to 27, inclusive, are those origin points on the Coast Line and if so, how do they move to Port St. Joe, intrastate?

A. I believe everyone of those are origins on the Coast Line. I don't recognize Iris. I don't know where that is. The others are Coast Line origin. It may be that they went over three-line combination. You notice three-line combination for quite a while has produced lower rates to Port St. Joe from quite a number of points than our interstate rates.

Q. Don't you as a matter of fact route most all of that interstate?

A. Yes, we can.

Comm. Patterson: We will recess until 7:15.

(At 5:15 p.m. a recess was taken until 7:15 p.m. of the same day.)

[fol. 748] Evening Session

Exam. Patterson: You may proceed, gentlemen.

C. L. Hinnint resumed the stand and testified further as follows:

Cross-examination (Continued)

By Mr. Ribe:

Q. Mr. Hinnant, will you please refer to B-39, your exhibit No. 12. Beginning with line 1 on B-39 you list for the period certain shipments of resinous wastewood to Pensacola, Florida. Over in the bottom right hand corner is the figure [illegible],523.47. It is that which, as I understand,

purports to represent the revenue which would have accrued to the railroads on basis of the increases which they are now seeking——

A. That is what that purports to be.

Q. That is based on the assumption the traffic would have continued to move at these rates?

A. Yes, sir.

Q. Have you made any investigation as to whether it will continue to move by rail by the rates sought, as at this proceeding?

A. I have not. This is made on practically all L&N traffic. I think every origin here is west of Chattahoochee, Florida, and I have only taken here the movements as reported by the L&N and are rerated.

Q. When you say practically all L&N, you mean terminated by L&N and that is what you mean by that expres-
[fol. 749] sion?

A. That is right and I don't see a single origin that I can recognize east of Chattahoochee. Some are joint line. Panama City and Blountstown, and I believe Altha takes joint line.

Q. Do you know what railroad Altha is located on?

A. It seems to me Apalachicola Northern or Marianna and Blountstown.

Q. Are you in position to tell us if either of those railroads have put in testimony in support of this petition and the increases you are seeking?

A. No, I have heard absolutely nothing from them, one way or another.

Q. Are the railroads here seeking to have the Interstate Commerce Commission prescribe rates on Florida intrastate traffic which will produce freight charges higher than the charges of interstate traffic to and from Florida?

A. Not generally. In some instances we are. For example lime where the Florida rates go below and above the 30,000 pounds interstate Southern scale we are asking that the full increases be put on that. Now on the wastewood, I am not too familiar with the level of the rates to Pensacola from this origin territory.

Q. Well, let's phrase it this way: As a general proposition as to commodities brought in Florida, intrastate and
[fol. 750] interstate traffic to and from Florida, is it the

purpose of the carriers here to seek additions to the rates which will result in rate levels on any commodities which will be higher than on interstate traffic?

A. I do not understand that.

Q. On pages 1, 2, and 3 of your exhibit No. 11 you traced this history of the proceeding before the Florida Commission. You recited the original hearing and various parties to the rehearing as to the exceptions which the Florida Commission made in granting these increases. You mentioned four hearings after the original hearing held by the Florida Commission in response to various petitions for rehearing. Can you tell us why at those four subsequent hearings after requesting a rehearing the carriers did not put in any evidence of any character purporting to prove the reasonableness of rates they were seeking to Pensacola, Florida?

A. No, because that would be within the province of the Louisville and Nashville and I don't know why they did not put in evidence on rates on wastewood. I know as far as rates to Gainesville and Jacksonville, evidence as to such rates was put in.

Q. Do you know whether or not the intrastate rates on resinous wastewood from Georgia origins to Brunswick, Georgia, are higher or lower than interstate rates from origins in Florida to Brunswick, Georgia, and for simplicity, I will confine it to Georgia and Florida on Atlantic [fol. 751] Coast Line Railroad?

A. From Atlantic Coast Line Railroad in Georgia and Florida, Brunswick is materially lower than Brunswick to Pensacola.

Q. I asked you from origin on Atlantic Coast Line in Georgia to Brunswick, Georgia, whether those rates were higher or lower than the rates from Florida origins to Brunswick, Georgia?

A. The rates from Georgia are from Georgia origin to Brunswick, Georgia, on wastewood—those rates received only a five percent increase under Ex Parte 123. That was by reason of order of the Georgia Public Service Commission which only granted a five percent instead of a ten percent interstate from Georgia to Florida. Those wastewood rates were increased ten percent, authorized by the increase

under Ex Parte 123. Since that time the increases intrastate in Georgia and interstate from Florida to Georgia have been the same.

Q. So that the rates today from Atlantic Coast Line or-gin from Georgia are still approximately five percent lower than from Atlantic Coast Line or-gin from Florida to Georgia?

A. They are five percent.

Q. How long have Georgia intrastate rates been lower than the interstate rates? Approximately?

A. I think they have always been lower.

Q. They have been lower for a long, long number of years?

A. Yes, we finally put in from Gainesville, Florida, as [fol. 752] intrastate from Georgia to Brunswick, to alternate with normal Florida scale and in so doing, by error, increased those rated under Ex Parte 123, which was after 1938.

Q. All this long period of years that Georgia intrastate rates on resinous intrastate rates have been lower than interstate from Florida origin to Brunswick, have the carriers ever brought any Thirteenth Section Case for the purpose of raising them to interstate level?

A. No, sir.

Mr. Ribe: That's all.

Comm. Patterson: Further cross examination?

By Mr. Hillyer:

Q. Mr. Hinnant, isn't it true that railroads sought reconsideration of the Florida Commission's order with respect to lumber rates?

A. It is.

Q. Isn't it a fact that case is still pending awaiting hearing after all these years?

A. After all these years. The last hearing was 1943 and we haven't had a decision.

Q. Have you ever asked for further hearing or a date to be set?

A. We have asked them from time to give us a decision.

Q. It is not pending further hearing?

A. Three or four years after to give decision.

Q. You didn't ask for another hearing?
[fol. 753] A. No.

Mr. Hillyer: At about the close of Mr. Hinnant's testimony and the testimony of Mr. Hinnant and others I moved to strike certain portions of his exhibit on the ground apparently they went to reasonableness per se of rates on many specific commodities adjustments, which commodity adjustments were not named in the complaint and as to which we had no notice. Mr. Hinnant's exhibits are filled with individual rates on many specific commodity adjustments. It has been absolutely impossible to me to make a study and analysis of these rates.

In issue in this case is the fact that the Interstate Commerce Commission allowed an increase of 25 percent generally, with exceptions, that the Florida Commission allowed only 20 percent with exceptions generally. The only issue is to whether the Florida Commission should have allowed 25 percent instead of 20 percent increase and the reasonableness of particular rates is not a matter to be considered in a general revenue case.

I will renew my motion to strike or not to consider Mr. Hinnant's exhibits and testimony with respect to phosphate rock, tin cans, plaster, gypsum lath, sulphuric acid, asphalt, pulpboard and paper boxes, brick, insecticides, lime and livestock.

I moved also to strike that portion of testimony with respect to meeting of competition of routes along interstate [fol. 754] routes with shorter intrastate route as having no place in a proceeding of this kind. It is not mentioned in the proceeding.

I have had practically no time to go in detail in Mr. Hinnant's exhibit. Others have cross examined him at great length and I prefer to stand on my objection.

Mr. Gwathmey: I have previously stated our position. I presume it is unnecessary to state it again.

Comm. Patterson: Any further cross examination of this witness?

(No response.)

Comm. Patterson: If not, you are excused.

(Witness excused.)

Mr. Maurer: Mr. Commissioner, Mr. Wolford presented some exhibits and testimony in direct examinatio- and some exhibits.

Exam. Mattingly: Do you want to cross examine Mr. Wolford? Just say so and we will have him right up here for you.

Mr. Petteway: Before beginning a cross examination, I'd like to make inquiry. Do I recall correctly that the petition was made a part of this record and is considered a part of this record?

Comm. Patterson: That's right.

Mr. Petteway: I want to call attention to an error in the [fol. 755] petition. I think Mr. Gwathmey will agree with me. It is an error on page six and it says parties are authorized to make the increases—referring to Ex Parte 166 increases,—in Florida case effective May 16, 1947, whereas the order which is appendix one shows effective date March 16, 1947.

Mr. Gwathmey: The error will speak for itself.

Mr. Petteway: It is in the record and I want to show that was March 16.

W. W. Wolford was recalled to the stand and testified further as follows:

Cross-examination.

By Mr. Petteway:

Q. Mr. Wolford, it has been the practice of the carriers, has it not, in the various phases of Ex Parte 162 and 166 proceedings to file petitions with the Florida Commission similar to those filed with the Interstate Commerce Commission and at the same time request the Florida Commission to defer action on those petitions until after the Interstate Commerce Commission had rendered its decision?

A. I think so.

Q. Now, on page 3 of your Exhibit No. 13, that is your narrative statement, in the first paragraph, did you mean to infer that you received a ten percent reduction on your Florida intrastate class rates August 21, 1947 as a result

of the reduction under Interstate Commerce Commission docket 23400?

[fol. 756] A. No, it refers to Southern Territory as a whole. That refers to all traffic within the—it refers to all of the traffic covered by Dockets 2800 within Southern Territory and interterritorial covered by that. In other words, by and large, it was a ten percent reduction.

Q. Did you not in 1935 or 1936 remove the Florida arbitraries on Florida intrastate classes one to seven to meet Florida motor truck competition?

A. About that time, yes.

Q. Now, with reference to the emergency increases on Florida intrastate rates in Florida Docket 1538 which corresponds to Interstate Commerce Commission Docket 162, you had the benefit of the full emergency increases on all traffic, with no exceptions, from July 1, 1946, effective date of interstate increases to March 16, 1947, did you not?

A. We had it between the filing of the Ex Parte 148 part of the case beginning July 1, 1946. That stayed in effect until the first interim decision in 162. I don't remember—January 1, 1947, I think.

Q. I am speaking about Florida increases granted you effective July 1, 1946?

A. Well, that was the Ex Parte 148 increases, was it not?

Q. That was Florida Docket 1538 and they were in effect until the following March 16th?

A. They were in effect until such time as you granted a [fol. 757] greater increase. I don't have the date in mind that you granted it.

Q. So that when the emergency increases ended, they were replaced by the 20 percent increases?

A. That is correct, subject to exceptions that were made in that decision, of course.

Q. So that during the first five months of '47, which is the five month period covered by your exhibit 14, you had advantage of either the emergency increases or the 20 percent increased granted by the Florida Commission?

A. During a part of that time, we didn't have it during all of that time, either one or the other. It was six percent during part of the time.

Q. It was 20 percent during the rest of the five months' period?

A. Yes, sir.

Mr. Petteway: That's all.

By Mr. Pettijohn:

Q. On page 2 of your narrative exhibit No. 13, you say that the over-all effect of these increases estimated by the Seaboard to produce overall average of about 17 and a half percent on interstate traffic. Is that 17 and a half percent applicable to Seaboard business or was that percentage as was estimated for the Southern Region?

A. As I recall it, the figure that we arrived at is for our own traffic and was in the neighborhood of 17 and a half [fol. 758] also.

Q. You handle little coal traffic?

A. Quite a bit.

Q. But compared to the L&N and the Southern, you don't handle very much?

A. Compared with those two perhaps we don't, but a tremendous amount of revenue is derived from coal.

Q. Would an increase on coal have the same bearing on the Southern District as it has on Seaboard?

A. I take it that the coal traffic, increase on coal, would tend to depress by Southern and L&N more than Seaboard, if that is the answer to the question.

Q. I ask you if that would tend to depress as much on Seaboard as on the Southern Region as a whole?

A. I wouldn't know.

Q. On page 3 of your exhibit 13, the third paragraph, I'd like to have you explain what you mean by: "Of course, if it were possible to separate the interstate traffic and revenues—" Why is it not possible?

A. What page?

Q. Third paragraph, page 3.

A. I don't think it is.

Q. You do separate intrastate and interstate revenues, don't you?

A. In an arbitrary manner.

[fol. 759] Q. Do you mean to say that revenue allocation interstate and intrastate is arbitrary?

A. I don't know of any purpose that I use it for that it is separated. Our commodity statistics don't separate it.

Q. Don't the annual reports?

A. No.

Q. You are one of the Seaboard witness in Docket 1574, which is companion to 166, put in intrastate in each of the Southern States and on interstate, if Ex Parte 166 were applied across the board?

A. Well, that would require going through the list of individual commodities and calculating a percentage or the effect of the maximum increase on each commodity and in an effort to get increase applicable intrastate versus interstate. And the size of that task would be greather than would be justified for the purpose I am using it here for.

Q. You don't so confine it. You say "if possible." I want to know why it is impossible to separate revenue tons and tons miles between interstate and intrastate?

A. Perhaps it is possible, but I didn't do it.

Q. On page 4 of Exhibit 13 you make some comments with respect to pulpwood. You say the Florida Commission authorized a nine percent increase under Ex Parte 162. Do you know that there was considerable reduction in the amount of pulpwood handled by the Seaboard Air Line [fol. 760] immediately after that decision?

A. No, sir, I don't know that.

Q. Do you know what effect your 20 percent increase had under Docket 1574, the interstate docket Ex Parte 166?

A. On pulpwood?

Q. Yes.

A. Reducing tons?

Q. Yes.

A. It didn't have any startling effect. It didn't come to my attention if it did.

Q. I will ask you if you know anything about the railroads coming to the Florida Railroad Commission the morning the hearing in Docket 1574 commenced and asking them to adjust the rates on petroleum so they wouldn't have to make exceptions on increases on petroleum rates?

A. Did I know anything about that?

Q. Yes, sir.

A. I don't recall about it. I am not questioning your word it was done. But I don't recall.

Mr. Pettijohn: That's all, thank you.

By Mr. Maurer:

Q. Mr. Wolford, in connection with your exhibits 15 you make certain comparisons between the present intrastate rates on pulpwood in Florida and the scale prescribed by the Interstate Commerce Commission in Docket 14358, which you refer to as the Covington scale. Where does that [fol. 761] scale have application today?

A. I am under the impression from what I have heard in prior testimony that scale has been superceded by another scale since it was prescribed. So if that is what you mean, I am not contending it is in effect in entirety or part.

Q. Aren't you mistaken? The scale which has been superseded is the scale that operates in certain of the northern states? The 14588 scale, I believe it is referred to in Mr. Hinnant's exhibit. The Covington scale according to the exhibit has application as a joint line scale between points in Virginia, North Carolina, South Carolina, Tennessee, Georgia and Covington, Virginia?

A. Yes, you are right. I was thinking about the scale in Georgia, Virginia and West Virginia they have on another exhibit.

Q. I will ask you again, do you knew where the Covington scale is used today?

A. Whether that scale is shown there is still in effect?

Q. Whether it is in effect today, yes, sir.

A. No, I don't know whether it is still being used within the territory where it is prescribed.

Q. Wasn't the purpose of this exhibit to show the rates on pulpwood in other states other than the Roanoke Rapids wood scale?

A. To show pulpwood scale is a reasonable one with [fol. 762] comparison with other rates and the question of whether those rates are in effect isn't dealt with in any testimony.

Q. Do you think it is a good comparison to compare current rates with rates non-existent where the agent change in those rates has not been made by the decision of the

Commission, the original rates having been applied by the Commission? Do you know what rates apply to paper mills in Virginia, such as Covington and Bigeland, Virginia?

A. From North Carolina, for example?

Q. From points in Virginia, for example.

A. No, I don't.

Q. Or from points in North Carolina?

A. If this scale isn't still applicable, I don't know what rates are.

Q. You are showing the going rate between pulpwood and rates which you don't know whether are in existence today or not and you have no information as to whether or not they move any tonnage?

A. The comparison is a scale prescribed by the Commission and that scale has not been superceded by any subsequent scale prescribed by them.

Q. You mean no subsequent scale has been prescribed by them?

A. No, sir.

Q. You have had the Roanoke scale in effect from various points in Florida to Jacksonville for many years, have you [fol. 763] not?

A. Yes, sir.

Q. Do you maintain any transit in connection with those rates?

A. No.

Q. Has the Seaboard been satisfied with the return to the Seaboard of outbound products from the mill at Jacksonville?

A. So far as I know, we have. I am not too familiar with it.

Q. You haven't found it necessary to provide any transit privileges on that movement?

A. No, but to the extent that the mill there may use water, I am sure we are dissatisfied with that.

Q. You wouldn't want to secure from the mill any tonnage more than the tonnage represented by the pulpwood you bring into the mill?

A. We would like to. I don't know we would argue that we wanted no more.

Q. That would be beyond the scope of the gentleman's agreement wouldn't it?

A. Yes.

Mr. Maurer: That's all.

By Mr. Overton:

Q. Mr. Wolford, would you turn to page one and page two of exhibit 19?

A. Yes.

Q. As I understand it, you are there comparing present [fol. 764] intrastate rates and the proposed intrastate rates on cement on the one hand with rates on cement prescribed in Docket 15806 in the particular decisions cited on Exhibit 132, ICC 627?

A. I think that is correct.

Q. Is this correct: That that scale with which the present and proposed Florida rates are compared is not effective on cement in the South either on interstate or intrastate traffic?

A. Are you speaking of the original scale now or of the scale increased?

A. I am speaking of the comparison you have made, the application of the original scale to points in Florida as you have compared them on your exhibit?

A. Speaking of only Florida now?

Q. Yes, sir.

A. This scale as shown in Column 7 to 12 is not the scale as is in effect in Florida today because the way it is built up there beginning with the basic scale and full Florida arbitraries was changed as I described in testimony in Exhibit 13.

Q. And the change is not in the basic scale, but entirely in the application of the Florida arbitraries?

A. Correct.

Q. And that was authorized by the Interstate Commerce Commission?

[fol. 765] A. That is correct.

Q. Do you submit the destination point shown on Exhibit 19, pages on- and two, as typical shipments from Tampa?

A. It is a fairly full list of destinations. I haven't checked it over any movements or test period, but I would think it was fairly representative.

Q. Would you accept my count of it showing of the exhibit that to the fifty destinations there shown the proposed basis in Florida would result in increases to only seven destinations?

A. You counted those from this exhibit?

Q. Yes.

A. That is all right, I accept your count.

Mr. Overton: That is all. Thank you.

Comm. Patterson: Any further cross examination?

(No response.)

Comm. Patterson: Redirect?

(No response.)

(Witness excused.)

E. C. Hicks, Jr. was recalled to the stand and testified further as follows:

Direct examination.

By Mr. Gwathmey:

Q. You submitted certain testimony as to which cross examination was reserved. Are you prepared for cross examination now?

[fol. 766] A. Yes, sir. Before I undergo cross examination, I should like to ask that reference be made to the foot of exhibit 50 and that the two blank numbers be filled in with the exhibit numbers. Where the letter "N" appears, exhibit No. 44 should be inserted and where the letter "D" appears, exhibit No. 33 should be inserted.

Comm. Patterson: Strike out N and D.

Mr. Gwathmey: Off the record.

Comm. Patterson: Off the record.

(Discussion off the record.)

Comm. Patterson: On the record.

Mr. Petteway: I want to defer my cross examination of Mr. Hicks until after Mr. Hillyer has finished on sugar cane proceeding and I probably won't have any cross examination then.

Cross-examination.

By Mr. Hillyer:

Q. Mr. Hicks, on pages 1 to 12, inclusive, on Exhibit 29, is it not a fact that all of that ancient history deals with the situation when the sugar cane was hauled under a trackage agreement and entirely by the motive power of the sugar company?

A. It's been some little while since I dictated that. I will accept your word for it. I don't remember how the historical narrative goes by page number.

Q. Have you any actual knowledge of the reported con- [fol. 767] versations which went on during that period which are narrated in about the first twelve pages of the exhibit?

A. You mean was I present?

Q. Yes.

A. No.

Mr. Hillyer: I move to strike all that portion of testimony dealing with the history concerning the trackage agreement which existed for a period of years. It is wholly immaterial and irrelevant and on the grounds the witness has no knowledge of the facts stated and a reading will show on its face it is mostly hearsay and reporting conversations between people not here and conversation which Mr. Hicks admits he did not hear.

By Mr. Gwathmey:

Q. Mr. Hicks, am I correct in understanding all this is based upon figures of Atlantic Coast Line records and figures of the company which are accessible to you?

A. You are and I may say very minute memoranda were made for the benefit of the files by those who attended the meetings and not only have I carefully examined all those memoranda and correspondence pertaining thereto, but I have obtained contracts themselves and read them carefully.

Comm. Patterson: Overruled.

By Mr. Hillyer:

Q. Do you have the files here?

A. I have sections of them. I don't believe I have the

[fol. 768] sections going as far back as that, but I can get them.

Q. In this early history——

A. Excuse me. I thought I had included enough of the history so the files would not be necessary. I didn't think you'd want additional information. That is the reason I didn't bring all the files in the service.

Mr. Hillyer: The objection is made not only on the ground of hearsay but on the ground of immateriality in a case of this kind, a general revenue case. I understand the motion to strike has been overruled?

Comm. Patterson: Right.

By Mr. Hillyer:

Q. Mr. Hicks, throughout about the first half of your testimony, is it not a fact you deal considerably with a matter of rates on Cuban sugar by water to Savannah in connection with rates on sugar cane in Florida?

A. We deal with them to the extent sufficient to show that the rates——

Q. I just asked didn't you refer to that subject on a good many pages, a good many of your pages in your testimony dealt with that subject?

A. It was made with the idea in mind——

Q. I am not asking what idea you had in mind. I am asking if there is not a lot of testimony on that in that exhibit?

A. Not a good deal. I want to tel- why——

Q. I didn't want to know why.

[fol. 769] A. No, I didn't find——

Q. The exhibit will speak for itself.

Mr. Hillyer: I move to strike all the testimony about Cuban sugar moving by water to Savannah as not having anything to do with fates in Florida on sugar cane or anything else.

Mr. Gwathmey: The testimony to which Mr. Hillyer is referring relates to the history of these rates on sugar cane and purports to show the circumstances under which the rates were established in and subsequently maintained for this purpose. I submit they are relative to this inquiry which involves reasonableness of rates as well as discriminations of the Interstate Commerce Commission.

Comm. Patterson: I will overrule the objection. The Commission will give whatever weight it deserves when it comes to consider it.

Mr. Hillyer: Do I understand there is any issue between the rates on Cuba one one hand and rates on sugar cane on Lake Harbor to Lake Okeechobee rates to Clewiston on the other hand. That objection is on the ground of hearsay and reading the text will support the validity of that objection. Throughout matter is stated by conversations which quite obviously Mr. Hicks was not present at. It is not something he is familiar with personally.

By Mr. Hillyer:

Q. Mr. Hicks, on page 48 and 55 and a half, I believe you [fol. 770] dealt at quite a great length with rates on sugar cane in Louisiana. Do you know anything about the actual movement from sugar cane, from your own personal knowledge and observation in the State of Louisiana?

A. Yes, I do.

Q. Have you been in that region and watched the movement of that traffic?

A. Yes, sir.

Q. When and how many occasions?

A. Let's see. I think the first time was in the shipping season of 1947-'48 and was also down there about three or four weeks ago.

Q. What was the extent of your observation?

A. I have seen them loading the cane in the cars. I have seen the cars on the siding loaded with the cane. I have been to some of the mills and walked around the mills and observed the track layouts and locomotives that the mills use in spotting and respotting and switching the cane. The intraplant movements. I have seen the tractors and motors they use in moving the cane around. I have observed the scales on which the mills weighed the cane. Just general observation of the whole operation.

Q. I take it then you are quite sure you are familiar with the observations you have reported in your testimony?

A. Yes, sir.

[fol. 771] Q. Do you know how many sugar mills there are in the State of Louisiana?

A. Well, counting the large and the small ones, quite a number. Some are inactive; some of them produce only syrup. But there are quite a number of them.

Q. Isn't it a fact that there are a great many small mills in Louisiana?

A. Yes, sir.

Q. Isn't it a fact that their capacity is small?

A. The capacity of the small mills is small.

Q. Yes. You have set out some mileage scales of rates here. Do those apply for trainload movements?

A. Well, the rates are not subject to a minimum number of cars per train, but the movement goes in large cuts of cars.

Q. They are not trainload rates, are they?

A. No.

Q. Isn't it a fact you can go around many of those mills and not find any operation similar to the one between Canal point and Clewiston, Florida?

A. Well, I don't know exactly what you mean by similar. That is a matter of degree. I don't think you will find they are identical but there are differences. For example, some of the mills out there have their trim roads that they use in bringing their own cane to the mill and it is not hauled by common carrier railroad.

[fol. 772] Q. That scale of rates wouldn't apply, would it? The rates published by the common carrier would not apply to movement by the industry over its own trim road; there would be no necessity of assessing a railroad charge?

A. That's right.

Q. Do you know of your own knowledge of any specific instance in Louisiana where there is a movement such as that southeast of Canal Point where sugar company's engines with an intermediate line haul by common carrier and all destination services performed by the sugar mill itself?

A. You have tied a whole lot of things together. Most of the mills do perform movement by what you call terminal service. Nothing more or less than intrastate spotting service. We deliver those cars to the sugar mill on the receiving track and after that, just as it is done in

many mills, the respotting service is done by their own intra-mill operations.

You, of course, understand it only a part of the United States Sugar Company's movement that is brought up to the railroad origin by the industry's own trim road. The rest of that sugar cane is brought to the railroad siding by other conveyances and is there loaded on railroad cars.

Now, I don't believe there is any instance in Louisiana in which cane is brought by the industry trim road to a railroad siding and there loaded on the railroad cars. Most of the trim roads out there are narrow guage roads and therefore there would be no movement of a standard rail-
[fol. 773] road car to the common carrier railroad. So in that one respect there may be a slight difference, but I don't think that is material.

Q. Do you know of any mill in Louisiana where the scales you have set out here apply where there is any such enormous movement running around over 9 hundred thousand tons to a million tons a year, such as this?

A. Various of those mills out there have a very, very substantial tonnage, but as I said in my direct testimony included in Exhibit No. 29, there is no single mill that has a movement of the volume that the Clewiston mill does. I said that was about the only difference between the situations in the two states.

Q. Pages 56 to 57 of your exhibit 29 discuss the question of how much cane it takes to produce so much sugar or something to that effect. Is that right?

A. I believe it is the following page that treats with that. I believe it begins on page 58.

Q. Well, I was referring to the Louisiana State University sections and the exhibit 47 as to the cost of procuring enough cane to produce 100 pounds of sugar and so on, in that general connection.

A. I thought you had reference to Exhibit No. 48, I believe it is, showing the respective sugar producing capacity of that in Florida and Louisiana cane?

[fol. 774] Mr. Hillyer: I move to strike those portions of Exhibit 29 on the ground that they are immaterial and irrelevant to the issue in this procedure. I may point out there is no allegation here or no proof any competition whatso-

ever exists between a mill in Louisiana drawing sugar cane from Louisiana into the mill compared with the sugar cane in Florida moving into Clewiston. I don't understand there is any issue there between intrastate commerce in Louisiana and intrastate commerce in Florida.

Mr. Gwathmey: May I ask a question?

Mr. Hillyer: Yes.

Mr. Gwathmey: Is it your understanding in a 13 Section case there is no obligation on the railroads as to reasonableness of intrastate rates which they are asking the Interstate Commerce Commission to order into effect?

Mr. Hillyer: Are you talking about a 13 Section case or a general increase case?

Mr. Gwathmey: I said 13 Section case such as this one.

Mr. Hillyer: I construe this case brought under 13 as being confined solely to the question of ascertaining a general increase in general revenue case authorized by the Interstate Commerce Commission. Whether the State of Florida should have less increase. According to my understanding of the case, that is ~~the only~~ issue here.

Mr. Gwathmey: Do you understand the issues here are [fol. 775] determined by the carriers or by the Commission's order of investigation?

A. By the carriers' petition.

Mr. Gwathmey: I have nothing more to say.

Comm. Patterson: Overruled. The Commission will give the testimony the weight it deserves. The Commission's order of investigation, of course, is what we are trying it under.

Mr. Hillyer: Yes, sir. The order of investigation is somewhat broader than the petition in its terms. I thought sure reading the two together, they related to that question.

Comm. Patterson: They relate to other questions rather than general increase. Discrimination and things of that sort.

Mr. Hillyer: I understand the issue is confined to class rates as to whether they should be increased 25 percent instead of 20 percent. I did not understand that level class rate was involved in this proceeding other than to the extent I have mentioned. That is my interpretation of the Commission's order based on the petition.

By Mr. Hillyer:

Q. On page 39 to 45 of the text, roughly, but I want to identify the subject, you discuss the matter of carload minimum weight at length. Is that correct, Mr. Hicks?

A. I believe they are the pages on which that is discussed.

[fol. 776] Q. That may not be accurate.

A. I discussed it in my testimony.

Mr. Hillyer: I move to strike all this portion of the testimony where it goes minutely into the question of carload minimum rates on the ground that the question of carload minimum rates cannot be involved in a 13 Section case of this kind based on a plea for more additional revenue. And on the further ground that the question is at issue at another proceeding before the Florida Commission and there is no allegation in that petition as far as I can read it of any discriminiation on the part of the Florida Commission against interstate commerce as to the carload minimum rates on sugar cane.

Comm. Patterson: That is overruled. If we were going to strike all the testimony in this case that wasn't definitely connected up with the issues here, we wouldn't have much testimony left.

Well that is a particular subject which is under a complaint in a particular issue before the Florida Commission in a different proceeding which has no relation to this, as I see it, no relation to interstate commerce.

Mr. Gwathmey: You don't think that minimum carload minimum weight has any bearing on the reasonableness of the rate?

Mr. Hillyer: It certainly isn't at issue in a case of this [fol. 777] kind, as I see it. It wasn't raised by your petition on interstate by any carload rate of sugar cane, because there is no movement interstate. While the objection may seem technical, I don't want to prejudice the case before the Florida Commission by having that projected into this proceeding, a technical case of that sort projected into this proceeding. I am going to stand on those objections and there will be no use of my entering into any minute or particular cross examination of this witness.

Comm. Patterson: Mr. Petteway, did you want to cross examine?

Mr. Petteway: No, sir, I have no cross examination.

Comm. Patterson: You are excused.

(Witness excused.)

Mr. Gwathmey: I am not exactly certain where we stand, but I believe that completes the cross examination of the witnesses whose cross examination was deferred. We, of the respondent railroads——

Comm. Patterson: Do you have some rebuttal?

Mr. Gwathmey: The cross examination was deferred——

Comm. Patterson: Do you have some rebuttal testimony to put in?

Mr. Gwathmey: We may.

Comm. Patterson: We will take a ten minute recess.

(A recess was taken for ten minutes.)

[fol. 778] Fred Pettijohn was recalled to the stand and testified further as follows:

Direct examination.

By Mr. Petteway:

Q. Are you familiar with the order the Florida Railroad Commission entered last week with reference to road aggregates which has been identified as Exhibit 157?

A. Yes, sir.

Q. Will you identify that as this order?

A. I do.

Mr. Petteway: Mr. Commissioner, we offer the document which as already been identified as Exhibit No. 157, we now offer in evidence and request leave to supply copies for the record.

Comm. Patterson: Let it be received for the record.

(Exhibit No. 157, Witness Pettijohn received in evidence.)

Mr. Petteway: I also request leave to file with you—I am sure it will be here in the morning—a copy of the application on which this order is based.

Mr. Gwathmey: No objection.

Mr. Petteway: That will be permitted, I assume?

Comm. Patterson: Yes, when it gets here.

Exam. Mattingly: If we are still doing business in the morning we will accept it. If not, we will give a number when it gets in.

[fol. 779] By Mr. Petteway:

Q. Mr. Pettijohn, are you familiar with order No. 1485, Docket No. 1570, in the Florida Railroad Commission with reference to petroleum rates in tank cars?

A. I am.

Q. Do you recall when and how the rates approved by that order came into existence?

A. I do.

Mr. Gwathmey: Pardon me. Do you happen to have another copy of that order? I haven't got one.

Mr. Petteway: I have asked them to send me one. It ought to be here in the morning.

Comm. Patterson: We have to have one for the docket.

Exam. Mattingly: Are you going to put that in the record?

Mr. Petteway: We offer in evidence No——

Exam. Mattingly: No. 158.

Mr. Petteway: We offer in evidence No. 158.

Comm. Patterson: It will be received in evidence and identified as 158.

(Exhibit No. 158, Witness Pettijohn received in evidence.)

Mr. Petteway: I would like to supply the application on which that order was based.

By Mr. Petteway:

Q. Will you now explain the circumstances around those particular rates?

A. The morning we entered the hearing in our Docket 1574 which is a companion docket to ICC Ex Parte 166, the railroads through Mr. Hodgkins had a conference with [fol. 780] the Commission, at which time they asked the Commission to reduce rates on petroleum and products on distances up to 150 miles so that by applying 25 percent increase under Docket No. 1387 ICC Docket 162 and fur-

ther adding a 20 percent increase under our Docket 1574, ICC 166, the resulting mileage scale would be to all intents and purposes identical with the truck competitive scale prescribed in order No. 2387, Docket 1387, dated April 12, 1939, increased 20 percent and gave the reason for their request that they did not want to make an exception in the petroleum rates up to 150 miles in their petition for us under our Docket 1574.

Q. Now are you familiar with any applications that are present and pending with the Florida Railroad and Public Utilities Commission from motor tank truck operators in Florida?

A. Yes, sir, the two biggest motor truck operators before the State of Florida have now pending in the State of Florida for decrease on rates on petroleum and products, bunker C oil, between points in the State of Florida. The Docket has not as yet been set down for hearing.

Q. Are you familiar with the fact that some two years ago the Florida Railroad and Public Utilities Commission entered an order after hearing in which the rails and truck operators of tank trucks participated, in which the Florida [fol. 781] Commission froze the petroleum rates of the rail carriers and tank truck operators?

A. I am.

Q. Are you familiar with the fact the Florida Commission rescinded that freeze order?

A. I am.

Mr. Petteway: That's all.

Mr. Gwathmey: No questions.

Comm. Patterson: You are excused.

(Witness excused.)

Mr. Gwathmey: Mr. Hicks, will you take the stand?

E. C. Hicks, Jr., was recalled to the stand and testified further as follows:

Mr. Gwathmey: I have a few more exhibits. I have given them around to some people. I don't know whether anybody else wants them or not.

Mr. Commissioner, the testimony which Mr. Hicks will now offer has been prepared primarily for introduction into the I&S proceeding. But in view of the fact that it is in rebuttal of testimony which has been put in here by witnesses for the Sugar Corporation, we will ask leave to put this testimony in now. We also ask that this be covered,—or we will reproduce it if necessary, separately, in the I&S proceeding.

Comm. Patterson: Do you propose to put it in there as [fol. 782] rebuttal testimony in this 13 Section case?

Mr. Gwathmey: Yes, sir, rebutal of testimony of United States Sugar testimony.

By Mr. Gwathmey:

Q. Mr. Hicks, have you prepared in narrative form a statement of testimony which you now desire to introduce?

A. Yes, sir.

Mr. Gwathmey: May we have this identified as an exhibit, Mr. Commissioner?

Comm. Patterson: Yes, the number is 159 for identification.

(Respondent's Exhibit 159, Witness Hicks, marked for identification.)

By Mr. Gwathmey:

Q. Have you also prepared two separate exhibits, one being in the form of reproduction of certain tariffs and the other a statement showing as to all trains of sugar cane moving into Clewiston, Florida, during the last four grinding seasons with less than the tariff minimum of fifteen cars, the deficit in cars and in weight, together with the applicable penalty charge and what the penalty charge would have been if the proposed rates had been in effect?

A. Yes, sir.

Mr. Gwathmey: May we have these two statements, marked for identification?

Comm. Patterson: Which will be first?

Mr. Gwathmey: Reproduction of tariffs.

[fol. 783] Comm. Patterson: 160 and 161 for identification.

(Respondent's Exhibits 160 and 161, Witness Hicks, marked for identification.)

By Mr. Gwathmey:

Q. Were the exhibits that have just been identified prepared by you and under your direction and are the matters and things therein contained true to the best of your knowledge and belief?

A. With one slight modification I'd like to make in the testimony. Now, it may seem inconsistent that on Exhibit No. 160 it showed Witness Parson's name and mine has been substituted. But as a matter of fact, there is no preparation to this exhibit except merely reproduction of the two small tariffs. It was planned that Mr. Parson would introduce this and make certain appropriate remarks and the plans were changed, so I am introducing that exhibit.

Q. Do you have any further statement which you wish to make at this time?

A. Yes, sir. First, I'd like to turn to page 2 of Exhibit 159 and insert Exhibit No. 160 in the blank space at the foot of the page.

Mr. Gwathmey: May we go off the records to do this?

Comm. Patterson: Yes.

(Off the record.)

Comm. Patterson: On the record.

I think we had better defer examination. Just introduce [fols. 784-785] the exhibits.

Mr. Gwathmey: May I ask Exhibits 159, 160 and 161 be received?

Comm. Patterson: Let them be received.

(Respondent's Exhibits 159-161, inc., Witness Hicks, received in evidence.)

Mr. Hillyer: I make the same objections as I did on 29 and 30.

Comm. Patterson: Overruled. Did you want to say something?

Mr. Gwathmey: No, it is now overruled.

Comm. Patterson: We will recess now until nine o'clock in the morning.

(At 9:30 o'clock p. m., July 1, 1949, hearing was adjourned to 9:00 o'clock a. m. July 2, 1949.)

[fols. 786-787]

Ocean Room,
Sheraton Plaza Hotel,
Daytona Beach, Florida,
July 2, 1949.

Met pursuant to adjournment at 9:00 o'clock a. m.

[fol. 788] PROCEEDINGS

Commr. Patterson: I think Mr. Hicks was on the stand.

E. C. HICKS, JR., resumed the stand and testified further as follows:

Direct examination (Continued.)

By Mr. Gwathmey:

Q. Mr. Hicks, at the time of adjournment yesterday, you had introduced Exhibits 149, 160 and 161. Do you desire to make a brief oral statement of supplementary nature, particularly commenting upon certain testimony offered by witnesses for the Sugar Corporation?

A. Yes, sir, but before I do that I should like to complete the statement I had started about the slight modifications of the text in Exhibit No. 159. I was asked whether or not the matters stated therein were true to the best of my knowledge and belief and I made one or two comments in connection therewith. In addition, I should like to make a slight modification of page 3, the last paragraph.

Q. Of which exhibit?

A. 159, in which I said the principal difference between the tariff on file with the Florida Commission and the one filed with the Interstate Commerce Commission and now in suspension is that the rates in the exhibit will reflect those in the former, but increased under Ex Parte 166 and 162. There is another difference I should probably stress, and that is the rates in the tariff on file with the Florida Commis-

[fol. 789] sion are trainload rates while the rates in the suspended carrier——

By Commr. Patterson:

Q. You have been talking about trainload rates. There is no such thing. They are quantity rates.

A. That is what Mr. Hillyer called them. They are subject to a minimum of 15 cars per train.

Q. They don't haul them in by trains?

A. Well, I think as a practical matter the trains don't carry anything but cane, but if there was anything else there to carry they could. However, the rates on file with the Commission are not subject to 15 cars per load minimum.

By Mr. Gwathmey:

Q. You mean rates filed with the Interstate Commerce Commission and you now want to make it clear they are not published as trainload rates?

A. Yes, sir, not subject to a minimum of any given number of trains.

By Exam. Mattingly:

Q. Those rates in suspension in the I&S case?

A. Yes, sir. Another modification I should like to make is in connection with the statement contained in the last paragraph in the Exhibit, page 24 and 25. I note that this statement as made probably leaves the inference that the reason for the movement of so many trains of exactly 15 cars is that there was difficulty in getting together enough cars for that train and probably cars were held until they [fol. 790] could be assembled. My attention has been called to the fact that probably the reason for the greatest number of these 15-car movements is that the mill works at night in unloading the cars that have brought the cane in there, but the mill forces do not work at night in loading cars. There is a constant operation of unloading and the cars must be on hand. Well, of course, in unloading all night, a great many cars are made empty. So early each morning there is a long train of cars empty to go out and distribute at the various sidings. If that engine with the caboose came back light, there'd be a necessity of paying on a minimum of 15

cars for that movement. So on the preceding evening, although there may be 35 or 40 cars at some particular siding to move, the sugar company instructs the railroad to leave 15 of those cars and not bring them in on that train, although they could be brought on that train. So that early morning train, when it distributes the empties, when it comes in can pick up the 15, thus obviating the necessity of paying for 15 cars.

By Commr. Patterson:

Q. You run a caboose hop?

A. In order to get this rate they have to maintain a minimum of 15 cars in one train. If you put 30 in one train and run the caboose light with the next train you'd pay for a 15 car rate for hauling the caboose to the mill. But that is purely a matter of bookkeeping, whether they haul one 30-car or whether two fifteen, it would all come out in the end. [fol. 791] The expense.

By Exam. Mattingly:

Q. To whom? To the Sugar Company?

A. Yes, in one instance they'd be paying for 30 cars and in the other instance they'd be paying for 15 cars.

Q. It seems like they'd be paying for fifteen cars in one rate and 30 under the other.

Q. I guess that is right. They save money by leaving fifteen of them there. So actually, I think that accounts for a great number of 15 cars rather than as implied by 159 that they are just saving them to collect them up.

By Comm. Patterson:

Q. I don't see that has anything to do with this case.

A. I didn't want any misrepresentation and it might be considered important by some.

Now, with respect to the rebuttal, you asked about, Mr. Gwathmey, there were two or three statements made that I am sure I don't know whether they left that impression to everybody, but it left that impression with me that probably was not what was intended. One was the matter of taxes. While I don't think taxes—the amount of taxes paid

by the railroad or by the Sugar Company on the particular land along there has anything to do with these rates, nevertheless, I think the record should be straight. Mr. Pettijohn asked Mr. Patterson if it wasn't true that the increase of tax 1948 over 1947 wasn't something more than 100 per- [fol. 792] cent on the property of the Atlantic Coast Line Railroad in the sugar cane district covered the town of Clewiston only and did not include state and county taxes. Mr. Patterson didn't seem entirely sure. He was certain about the Clewiston part. But I would like to make it clear that the assessment, state and county, on the entire line of the Coast Line over which the sugar cane is handled was more than doubled 1948 over 1947.

One other matter that Mr. Patterson covered was that of tonnage transported during the last season, 1948-'49 season. He testified that the railroads moved into Clewiston 912,697.70 tons and was asked if that didn't include some town site cane. Perhaps I should explain in the immediate vicinity of the mill there is a good deal of cane grown on what is termed Clewiston town site. I am not sure all of that is in the city limits or whether it is in the immediate vicinity, at any rate, that cane does not move by rail. The mill is so arranged that the can- cannot be dumped from the fil-ed wagons into the hoppers, but must be loaded first into railroad cars and these cars are so constructed that they are adapted for dumping of cane. So the cane is transferred from the field wagon to the cars on the mill property by them, switched by the mill's engines to the dump for dumping.

At arriving at our tonnage figures for this year, I had two of our most careful clerks tabulate the weights shown on every one of the waybills. One man called the figures to the [fol. 793] other and he set them down and then to be sure there was no error, they read them back to each other. After that was done, the weights were totalled, not on a comptometer, but on an adding machine so they would have a tape and it was checked back so no possibility of any error could exist. However, when he got through with that, we found our totals were several thousand tons less than the tonnage figures furnished the railroad by the Sugar Corporation and as has been testified, tonnage figures are fur-

nished us every two weeks by the Sugar Corporation. And when I totalled those figures, I found they exceeded our figures considerably. So I sent a man to Clewiston and he and the people in Clewiston carefully checked back to determine how that error or difference could have come about and they found that the cause of the discrepancy that probably inadvertently the Sugar Corporation had included in tonnage figures on the town site cane that had not moved by rail and reported it in the month of December 1948, along there. There was an excess of nearly 6,000 tons due to that fact.

So I am positive that Mr. Patterson was mistaken when he said that his figure of 912,696.70 tons did not include town site cane. That cane was more than transported by the railroad.

By Mr. Hillyer:

Q. What was your figure, Mr. Hicks?

A. My figure was 905,855 tons. You will find that on one [fol. 794] of my exhibits it is shown as 1,811,711,000 pounds. It is shown on one of my exhibits. There was a couple of statements made by Mr. Cecil Jones which left with me an impression I feel certain he didn't intend to create on the record. The rist was that,—in fact his words were that cars vary from 60 to 115 per train when arriving at Clewiston.

Now, I think undoubtedly it is true that some trains do have from 60 to 115 cars, but in checking back through the records that we made up from our waybills and wheel reports, and which I brought with me, I find that during the 1947-'48 season the number of trains arriving at Clewiston was less than 60 cars, was 611, while the number of trains arriving at Clewiston with 60 cars or more was 287. In the 1948-'49 season, 476 trains with less than 60 cars arrived at Clewiston and 358 trains with 50 cars or more. That doesn't mean that anything like the majority of those trains contained up around 60 cars; in the 47-48 season, 142 of those trains had only 15 cars. In the '48-'49 season 162 of those trains had only 15 cars. I think Mr. Jones just didn't quite finish his statement on that.

By Mr. Hillyer:

Q. Was that loaded trains? You are not referring to empties?

A. Empties don't come to Clewiston.

By Mr. Pettijohn:

Q. Do you have the number of loaded cars handled into [fol. 795] Clewiston for the number of years?

A. One shows number of cars and total weight for 1948-'49 season.

Q. It can be computed from that?

A. Yes, it shows the average weight of all cars and average weight of those loaded below the minimum and the number loaded to or above the minimum.

Mr. Pettijohn: Thank you.

A. Again Mr. Cecil Jones said that the sugar cane company delivers to the Florida East Coast Railway at Canal Point cars of cane in cuts of 60 to 70 cars and they leave for the mill. With me this leaves the impression that cars of 60 or 70 trains are delivered at Clewiston. Trains of 60 or 70 cars are delivered to Florida East Coast at Canal Point and they move through as a solid train and there is more or less a overhead movement to the mill. I don't think this impression was intended to be created because I find that during the 1948-'49 season there were four hundred thirty-four trains that started out on the Florida East Coast Railway and of this 434, only 148 trains that were received by the Atlantic Coast Line Railroad from the Florida East Coast at Canal—excuse me,—at Lake Harbor were not then stopped one to three times in the eight mile distance from there to Clewiston to pick up additional cars at the various sidings.

Mr. Gwathmey: Just a moment. Would you mind read-[fol. 796] ing that last statement back?

(The last answer was read by the reporter.)

By Mr. Gwathmey:

Q. Is that what you meant to say?

A. Yes, sir. The remaining 286 trains, there were stops

at least once and as many as three times between Lake Harbor and Clewiston to pick up additional cars.

Of course, this does not mean that in addition to these stops on the Atlantic Coast Line there were not still more stops on the Florida East Coast between Canal Point, the starting point of the train, and Lake Harbor to pick up cars on that line. I have tabulations from a number of the wheel reports on these trains and taking the trains that started out at Canal Point during the week of January 4th to January 11, 1948——

Q. '48 or '49?

A. '48. The number of cars on these trains when they started out at Canal Point ranged from 14 to 38 and averaged 28.23 cars per train.

I think it might be well for me to give a few typical examples of the make-up of these trains in that week, which is representative. I have all of the train reports from the wheel reports from the beginning of that season, November 11 through January 11—not through January 11, through January 10. It is the fourth through the tenth, but I have taken this last week because that was after the season had [fol. 797] gotten in full swing and the trains were more apt to have full tonnage. Here is a train on January 7th that had 76 cars when it arrived at Clewiston, but when it left Canal Point it had 22 cars. It stopped and picked up seven more at Runyon. It stopped and picked up 9 more at Dahlberg, picked up ten more at South Shore and it picked up 11 more at Miami Locks No. 1. All of those are origins on the Florida East Coast. Then after it was delivered to the Atlantic Coast Line Railroad at Lake Harbor, it stopped at Watson, Florida, and picked up one car and then it picked up 16 more at Bar Beach, Florida.

I just want to show that this is by no means hitching an engine on a train of cars at Canal Point, 60 or 70 cars, and running to Clewiston without a stop. Other witnesses will explain how this switching and pick-up is performed.

I will give one more illustration: On January 10, 1948, a train which had 57 cars when it arrived at Clewiston started from Canal Point with 22 cars, seven were added at Runyon, three at Dahlberg, seven at South Shore and three at Miami Locks No. One, all Florida East Coast sta-

tions. Then after the train was delivered to the Atlantic Coast Line, it stopped and picked up two at Watson, two at Bar Beach and ten at Ritter.

I believe I overlooked saying in the 1947-'48 season of the 488 trains that started out at Canal Point, 439 stopped one or more times for additional cars after delivery to the [fol. 798] Atlantic Coast Line Railroad at Lake Harbor. Only forty-nine of the 488 trains that were received by the Atlantic Coast Line Railroad at Lake Harbor moved from there into Clewiston without an additional stop and that, of course, is not saying these 49 trains had not already stopped for additional pick-ups between Canal Point and Lake Harbor.

Mr. Gwathmey: I believe the exhibits were received yesterday afternoon?

Commr. Patterson: They were.

Mr. Gwathmey: The witness is available for cross examination.

Cross-examination.

By Mr. Hillyer:

Q. Mr. Hicks, in the tonnage figures which you gave, were those the figures for the actual weight of the shipments or was it the basis of the freight charges?

A. They were based on the actual weight of the shipments.

Q. Is it not a fact that a number of cars were loaded less than the required minimum?

A. Yes, sir; but if that difference between the actual weight and the minimum weight had been included, it would have been far more than the difference between Mr. Patterson's figure and mine. It would have been many thousands of pounds more.

Q. Didn't you understand the figure he gave was the figure on which the freight charges were based?

A. No, sir.

[fol. 799] Q. You don't think that would account for the difference, then?

A. I don't believe so, not in view of what I have just said.

Q. Do you know? Have you checked it to see?

A. We have checked to determine the deficit, actual loading, on the carload minimum weight for the '48-'49 season. That is shown in my exhibit No. 38, page 3.

Q. I don't think the actual figures are important, but isn't this a fact that if your figure of the penalty weights, not loaded, is greater than 6,800 pounds, then they paid freight charges on more than the tons shown by Mr. Patterson and more than shown by you?

A. Of course, if they paid freight charges on basis of the carload minimum weight and the actual weight was less, they would have paid freight charges on more than the actual weight as shown by me.

Q. Now, isn't it a fact they calculated them on a basis of the former minimum of 36 and 38 thousand pounds whereas, you may be using a 40 thousand and 44 thousand pounds?

A. Freight bills on that basis had been prepared.

Q. In other words, as far as the actual tons go, as shown by your difference here, by 6,800 tons, that is less than one percent of the total, isn't it?

A. I haven't calculated it.

Q. You have Mr. Patterson's figure of 912,000?

A. If you calculate it is less than one percent, I haven't. If you have, that is all right.

[fol. 800] Q. Now, what is your impression—or, rather, was it your impression there was anything in Mr. Cecil Jones' testimony to indicate there were no stops en route? Was that the way you understood his testimony?

A. I said I didn't think he meant to convey that impression, but that was more or less left with me and I just wanted to make the record clear that he must not have intended that because that wasn't the case.

Q. I didn't get that impression, but if it was, I am glad. I think he mentioned pick-up en route and a number of stations in each line.

Comm. Patterson: I think he said at Lake Harbor they merely hooked on the train and took it to Clewiston and did pick up cars en route. I think he said that.

A. I am sure he didn't intend to misrepresent it.

By Mr. Hillyer:

Q. In the cost study introduced here which you have seen, isn't it a fact that those costs are based on the total time of the crew?

A. I don't know anything about the cost schedule. You will have to talk to the accouting man.

Q. Doesn't it show on its face the number of hours charged to that crew?

A. That I don't know. I wasn't particularly familiar with that.

A. In other words, if they have included in the cost [fol. 801] accounting the total time of the crew, it wouldn't matter how many times they stopped to pick up, would it?

A. I don't know.

Q. Do you know whether or not the total time——

A. I mean I don't know what bearing it would have to the cost study. I know it makes a big difference on the operating disability.

Q. Do you know whether or not the total wages paid to the crews exceeded the time actually required for the movements including the stops?

A. I think anything that I'd say about that would be hearsay.

Mr. Hillyer: That is all I have except in commenting there is a good deal of testimony in Exhibit 159 which relates only to suspension case.

Comm. Patterson: That's right. They sort of lifted that out of that case and brought it here. There is a lot of extraneous stuff there.

By Exam. Mattingly:

Q. I'd like to find out a little more about this train that you talk about, if it came back without any cars, you said it would go up the line with empties and suppose he came back without any cars at all, would the sugar company have to pay charges on that?

A. I think so because I think the tariff provides these rates for these movements subject to minimum number of cars per train. If we had take a string of empties out for [fol. 802] the Cane Company when their instructions were to drop all of them and had come back there from this run

with the engine and a caboose car light, or one or two cars, it is my understanding of the tariff that the charge would be assessed for a minimum of fifteen cars for that train movement.

By Mr. Patterson:

Q. Let's take a situation such as this: If they brought one car back under the tariff they'd have to pay. But suppose you didn't bring any cars back, only brought the locomotive and caboose back for your convenience. Would they be charged for the train if you were moving the power at your convenience?

A. I believe they would, but I guess the tariff——

By Exam. Mattingly:

Q. It is a rather hypothetical question.

A. I never thought about it before.

By Mr. Hillyer:

Q. Mr. Cecil Jones say no they don't charge for them.

A. They don't have any to charge for.

By Comm. Patterson:

Q. It is purely a hypothetical question. It never happens, is that correct?

Mr. Hillyer: Mr. Cecil Jones, is that correct?

Mr. Cecil Jones: We don't have any light trains.

Comm. Patterson: As long as they don't have them, it isn't important.

By Exam. Mattingly:

Q. This may be covered in your written statement and I haven't read it. If it is, we can skip it, but is this rate [fol. 803] which is at present being charged on the cane inbound something in the nature of the transit rate?

A. Yes, sir, definitely, it is a transit rate.

Q. Was it sometimes called a cut back rate?

A. They pay the net transit rate in the initial instance and there is no cut back, but of course, if they did not ship

the product of the cane there'd be the necessity of paying the difference between net transit rate they had already paid and otherwise applicable local rate.

Q. Is that otherwise applicable rate shown in your testimony?

A. Yes, it is in exhibit No.——

Mr. Hillyer: 160?

A. 42. It is a mileage scale of rates prescribed by the Florida Commission a number of years ago and that is dual basis. They prescribed two lines of rates, one applicable when the product is reshipped by rail and the other which is double the one I just mentioned applicable when the cane is not reshipped by rail.

Q. When it is reshipped by rail, is there any provision as to the destination of the reshipment?

A. No, sir, the tariff on file with the Florida Commission is applicable only on intrastate traffic. It says so. But all along the outbound sugar has been shipped to interstate points and the outbound molasses has been shipped to some interstate points and some to intrastate points.

Q. Is it your position as a technical tariff matter that on [fol. 804] affic which moved inbound and the products moved outbound interstate that these net rates did not apply and that the local rates were really applicable?

A. We are not taking that position, but I think actually that probably would have been the case. It was brought out in the hearing of Docket 30087 that the railroads made a mistake when they filed that with the Florida Commission rather than with the Interstate Commerce Commission in the beginning and counsel for the railroads promised Commissioner Alldredge that it would be filed with the Interstate Commerce Commission and that was done and that relates in Docket 5646.

Q. You are not trying to correct those rates on inbound?

A. No, sir.

Exam. Mattingly: That's all.

A. Not on account of the rates. There are some outstanding under-charges due to the matter of minimum weights.

By Exam. Mattingly:

Q. I was talking about the difference between net transit rates and local rates.

Mr. Hillyer: Since Mr. Hicks stated his interpretation of the proceeding with Commissioner Alldridge, I would like to state mine. We pointed out to Commissioner Alldredge that Florida tariff had been filed without any notice and became effective on the same day that it was filed and that it was a transit tariff; that Commissioner Alldredge's posi-
[fol. 805] tion was they couldn't have filed the tariff in that form with the Interstate Commerce Commission. I am sure the Commissioner did not exact any promise from the railroads to do anything about it. He was merely talking, as I understood it, about the fact that the Florida intrastate tariff which was placed before him would not be acceptable in the form it is to the Interstate Commerce Commission under its rules.

Comm. Patterson: Won't the record in Commissioner Alldredge's case speak for itself? Why argue about that?

Mr. Hillyer: In the written testimony, two or three places Mr. Hicks referred to this promise to the Commissioner with the implication it was exacted.

Comm. Patterson: It is all right to call attention but I don't think there is any point in arguing it any further.

Mr. Gwathmey: This witness has not made the statement here that Commissioner Alldredge told the railroads to file this tariff with the Interstate Commerce Commission.

Comm. Patterson: It left the impression that the railroad had promised to file a tariff with the Interstate Commerce Commission in respect to that. I read his statement and that is the impression he left.

Mr. Gwathmey: I wanted to correct that——

Comm. Patterson: Off the record.

(Discussion off the record.)

Comm. Patterson: Any further examination of this wit-
[fol. 806] ness?

(No response.)

Comm. Patterson: You are excused.

(Witness excused.)

Mr. Petteway: Would this be an appropriate time to supply these exhibits we were to get numbered?

Comm. Patterson: Do you have them numbered?

Mr. Petteway: Just the first two introduced last night. The first two were received in evidence last night and the remaining exhibits, the first one will be 158 and 158. They were received last night. The next one is Florida Intrastate Application No. 142.

Comm. Patterson: Off the record.

(Discussion off the record.)

Mr. Petteway: I want to call attention to the fact the Exhibits Nos. 162 and 163 are not signed by the agent who filed them. The originals are signed and on file with the Commission. We offer these all in evidence, Mr. Commissioner.

Comm. Patterson: Let the exhibits Nos. 158 and 158 and exhibits 162 and 163 and 164, 165 and 166 be received for the record.

(Respondent's Exhibits 162 through 166, inc., Witness Hicks, received in evidence.)

O. P. Dowling was sworn and testified as follows:

[fol. 807] Direct examination.

By Mr. Gwathmey:

Q. Please give your name, address and occupation.

A. O. P. Dowling, address Lakeland, Florida, occupation Trainmaster.

Q. Atlantic Coast Line?

A. Yes.

Q. How long have you been connected with the Atlantic Coast Line Railroad and in what capacity?

A. 21 years; as telegraph operator, agent, train dispatcher, chief train dispatcher and trainmaster.

Q. Please outline in a general way your present duties.

A. I have general supervision over the men in train service and other employees in transportation service in the

territory assigned, which includes the Clewiston area. I examine these men, see that they understand and abide by the rules. I have to give special attention to prompt and economical operation of trains and movement of cars, and take general charge in case of accidents to insure prompt clearing of line and safety of trains and property.

Q. I take it, then, that you are th-roughly familiar with the handling of sugar cane to Clewiston, Florida, and the distribution of the empty cars?

A. You are correct, sir.

Q. Do you have a map or sketch of the Atlantic Coast [fol. 808] Line Railroad tracks over which the cane is moved to Clewiston and of the track layout in the mill yard?

A. Yes, sir.

Mr. Gwathmey: May we have the map marked for identification?

Comm. Patterson: 167.

(Respondent's Exhibit No. 167, witness Dowling, marked for identification.)

By Mr. Gwathmey:

Q. Mr. Dowling, this map shows the Atlantic Coast Line tracks, does it not, and purports to show the tracks of the Florida East Coast extended eastward from Lake Harbor, Florida, is that right?

A. Right.

Q. These little squares on the map, little stub lines are mile posts, aren't they?

A. Correct.

Q. Does the map itself show the name- of the various sidings at which cane is located along the line of the Coast Line?

A. Yes, sir, it does.

Q. Does it also show the layout of the plant of the United States Sugar Corporation at Clewiston?

A. Yes, sir.

Q. And the tracks at that point are shown in the inset?

A. That's right.

Mr. Gwathmey: Mr. Commissioner, If there are any questions you or the Examiner would like to have cleared [fol. 809] up about this map, I would be glad to do so.

Comm. Patterson: I think the map is clear enough.

Mr. Gwathmey: Thank you.

By Mr. Gwathmey:

Q. Please point out for the benefit of the Commission the principal features of the map, including a description of which are railroad and which are Sugar Company tracks.

A. Gunson siding on the map has been removed. Benbow No. 3 siding was eliminated through error and I have added that siding in ink. It is immediately opposite Friarson & Company's team track. My post VD 940.

It is my understanding the main track Moore Haven to Lake Harbor is railroad owned, also team track at Ames, Epps, Clewiston, passenger team, Clewiston freight station yard, including wye, the mill interchange track at Sugar Junction, and all tracks at Lake Harbor to center of the canal bridge, including the wye. The Sugar Company owns the tracks at Gramlin, Benbow No. 2, Benbow No. 3, Liberty Point, Sugarton, Sugar Junction (except interchange track), Ritta, Bare Beach, and Watson, and has an interest in the track at Shawnee. These tracks serve loading hoists which are accessible to roads leading from cane fields. Our crews, engines and cabs originate at Clewiston freight station, working in and out of Clewiston, handling empty cane cars from the mill to the various loading hoists on our line, [fol. 810] and to the Florida East Coast Railway at Lake Harbor for loading at hoists on that line, and handling loaded cane cars from the hoist tracks on our line, and from the Florida East Coast at Lake Harbor, to the mill yard at Sugar Junction. The terrain is practically level, however, there are some stiff curves where speed is restricted. Clewiston (including Sugar Junction) and Lake Harbor are in yard limits, and trains and engines operate under yard limit rules which call for a speed at which they can stop within one-half the range of vision. Other tracks are used under straight train order operation. The most distant point of operation south of the mill is Lake Harbor, eight miles, and north of the mill, Gramlin, twelve miles. The

close proximity of the loading hoist tracks to each other makes it impossible to obtain near maximum speed especially with train of any size and the absence of a wye at the north or west end turnaround point makes it necessary for trains to move in one direction with engine backing up, which restricts speed to 15 miles per hour. Maximum speed north of Clewiston is 35 miles per hour, and south of Clewiston, 20 miles an hour.

Q. Please point out the locations at which the cane is loaded into the cars, and tell us how many cars each of the loading sidings will hold.

A. Starting at the north end, Gramlin will accommodate 15 cars; Benbow No. 2, 15 cars; Benbow No. 3, 15 cars; [fol. 811] Liberty Point, 21 cars; Sugarton, 15 cars; Ritta, 20 cars; Bare Beach, 15 cars; and Watson, 8 cars. You understand Gramlin siding has a car capacity, or length, of 30 cars, but that when 15 cars are spotted north of the loading hoist, the south end of the track or south of the hoist has to be left open in order for tractors to pull cars down as they are loaded. Thus, if 16 instead of 15 cars were spotted, only 14 could be loaded. Ritta is a spur having a hoist track of 20 cars capacity, and storage track of about same capacity. Cars are switched on both of these tracks by the United States Sugar Corporation tractors which can place cars from one track to the other. Other hoist tracks are similar to Gramlin, that is, double-ended.

Q. How is the cane from the various loading points waybilled?

A. By conductors.

Q. How many locomotives, caboose cars, and train and engine crews are normally required to furnish the service of moving this cane to Clewiston?

A. Three Pacific 4-6-2 type steam locomotives, with tractive power of 33,400 pounds, three caboose cars, and four train and engine crews.

Q. You are speaking of Atlantic Coast Line now, are you not?

A. Yes, sir.

Q. Please describe the duties of the train and engine crews, and exactly how the empty cars are moved from the mill.

[fol. 812] A. Empty cane cars are lined up on a track in the

mill yard by United States Sugar Corporation engine as they are unloaded, and most generally the empty car trains are ready on arrival of our crews, but at times our crews have to wait for sufficient empty cars to protect necessary placements which, of course, builds up initial terminal overtime payments to our crew. On obtaining engine and cab at freight station, crew heads out north wye, backs down main track to south wye at Sugar Junction, heads into and through the mill yard to the scale house where it received the Sugar Company's instructions. These instructions tell the conductor how many empty cars he is to handle from the mill and exactly what he is to do with them, showing number of cars to be spotted at each loading hoist and number to be delivered Florida East Coast.

For south end runs, a copy of the Sugar Company's instructions is furnished our conductor for delivery to Florida East Coast conductor at Lake Harbor, instructing him as to switching at Florida East Coast hoists. These instructions specify also the loads to be moved, and in case of anticipated large trains, instructions may include mention of track in which to head at the yard on return. Southbound trains place caboose cars on south end of the empty cars and run engine around train, getting on train at north end of yard and heading out south wye.

[fol. 813] Northbound trains run around train, drop caboose by—in other words make a flying switch—and place it on north end of train, returning to south end and attach engine, back train out through south wye, then head northwardly.

Southbound trains working Ritta make up trains in same manner northbound trains do, that is, with cab on north end, engine on south end, and back entire train out south wye and to Ritta.

This is necessary because there is no track at Ritta to run around cars. When the empty cars in mill yard have been cabbed and while engine returns to opposite end of train, the conductor walks the train making a list of the cars, in order to make out his car accounting reports. As soon as the trainman is able to leave the engine, it is his duty to walk the train lining up air hoses, checking angle cocks and hand brakes. When engine couples to train, air brake pipe pressure is built up and regular brake test made

to assure proper working of brakes. Then train proceeds on its way.

It is always necessary for trains in both directions to leave and enter the mill yard through the south wye to keep the cars turned in the right direction. The cane cars are constructed for unloading on one side under three hanging type hopper doors, which are released after elevating the opposite side of car by lifting rail. Since only one side of the cars has doors, the loaded cars must be handled into the mill with doors on west side so they can be dumped. [fol. 814] Working hoists usually require a full or capacity spot of empty cars, which is called for on the Sugar Company's instructions. When conductors on outbound trains have instructions, for example, to leave 15 empties at Sugarton, it is with the understanding the 15 cars previously placed at Sugarton have been loaded, but oftentimes conductors find only 10 or 13 cars loaded and crews still working. Thus it is not possible for them to leave more than enough empty cars to build up to 15, which is the hoist track capacity. If *then* are loaded, therefore five empty cars are already on hand, and the conductor can leave only ten of his 15 empties, making necessary to carry by five empties and bring them back on return trip, dropping them by on north end of track. He is required to leave the empty cars exactly as instructed by the mill, otherwise he may tie up a loading hoist crew waiting for empty cars to load.

In the case of empty cars delivered Florida East Coast, when Florida East Coast delivers us train of loaded cars, our train is pulled to north end of north switch, long interchange track, Lake Harbor, and engine cut off. Florida East Coast train is pulled up our main line just south of this switch, or between the interchange track switches. Our engine couples to Florida East Coast train of loads; Florida East Coast engine couples to our train of empties and pulls it through the interchange track siding, thence [fol. 815] to its main line. Soon as rear of the empty train passes north interchange track switch, our train departs for Clewiston. Regular air brake test, and a check of train for hand brakes, are made, of course, before departure.

Q. Is there any particular necessity of operating with

unusual caution on account of possible interference from yard engines, etc?

A. Yes, sir, while operating in the mill yard, in addition to observing yard limit rules of slow and careful operation, our crews are required to exert themselves unusually to avoid getting into the path of switch engines and their trains. In addition, while in yards exclusively used by our crews we can always depend upon ladder and lead switches being properly lined, but this is not always true of the mill yard as mill crews are apt to leave switches as they were last lined up when used. Our crews, therefore, have to operate expecting switches to be lined any way, and are under orders to leave switches in the mill yard lined like they find them. Then, too, the difficulties of night operation where vision is obscured by curves, or by fog, or by many lights making it difficult to discern and interpret lantern signals, present delaying results. Once we get out of the mill yard and on the road, the switching and running can be controlled much better and a faster operation obtained.

[fol. 816] But every move we make in the sugar mill yard is of necessity carefully guarded to allow for mill engines. When engines are pulling, brakes can easily be applied on engine and train when speed is under control, but when trains are being backed, trainman on head end of the cut watching for obstructions and switches has to rely on hand sighals or on opening of angle cock to apply brakes in emergency, in order to stop. We make the same number of moves backing up that we make heading in the mill. If the train backs out of the mill, it heads in, and vice versa.

Q. Please describe the placing of the empty cars at the various loading sidings.

A. We place empties according to the instructions given the conductor by the Sugar Company at the scale house. The assumption is that on ou-bound trips, we will merely set out empty cars in farthest end of siding from the sugar mill. This is what occurs when the hoist is not working at its capacity and there is room, or when all cars previously spotted have been loaded, but if all cars are not loaded and there is not room to leave a full complement of empty cars, the conductor has to take the surplus by with him, and on return trip has to drop them in. In placing empty cars at Ritta hoist, it is necessary to back entire train from the

mill yard to Ritta, leave trai on main track south of spur-switch, back engine into spur and gather up loads from both hoist and storage tracks, pull them to main track and [fol. 817] couple to empty train, cut off cab, pull up, and shove the empties in clear on spur, then shove loads back on main line, take engine back into spur and shove empties back to Ritta hoist and storage tracks as desired. This hoist usually loads 35 to 40 cars, and this means that during this switching operation, on the curves and over the crossings, usually at night, switching is done while handling up to 80 cars. When backing from mainline to hoist shoving cars ahead, conductor rides front end of leading car with a burning fusee and shining his lantern ahead to look out for cars on the main lead pulled down by tractors, and has to be prepared to stop quickly with application of emergency brakes by opening angle cock. This is not especially bad on a clear night, but the nights on the lake are not always clear, and under such conditions the operation has to be surrounded with great caution to avoid a collision or injury.

Q. Please now describe the operation of picking up the loaded cars on the return movement.

A. On return of the trains toward the mill from north end, cab is dropped by engine at turn-around point, then the engine cuts off and picks up loaded cars from end of each siding nearest the mill. We frequently have instructions to get a certain number of loads from a hoist, and at times this requires waiting for sufficient number of cars to be loaded, particularly where minimum train limit of 15 cars is involved. This may also be the case when empties [fol. 818] are running close. For the last month or six weeks of past season, we waited from one to two or more hours at Gramlin for cars to be loaded, almost daily. Normally the switching at the double ended hoist sidings is a simple pickup, but there are times when surplus empty cars which cannot be put in the sidings have to be left on opposite end to avoid long empty mileage, and under such circumstances these cars have to be switched back of the loads. At Ritta, the operation is as previously explained. The loads are on both tracks and perhaps on the main lead of the spur track. While the trainman is picking up, lining air, checking hand brakes, etc., the conductor is check-

ing the loads to see if safe for movement, and making a list of the cars of waybilling, and making out his reports. When he returns to the cab, he makes waybills and bills of lading.

Q. Please explain how the trains of loaded cars from the north end and the south end, respectively, are handled through the wye at Sugar Junction and delivered to the Sugar Corporation.

A. Trains from the north end are pulled by the south wye switch at Sugar Junction, and backed into the mill yard through the south wye, to keep cars turned right, with conductor riding the leading platform of cab, watching out for an open track. This movement, in addition to being slow for reasons of safety previously outlined, has to be extra slow to allow conductor time when he finds an open yard [fol. 819] track in which to put his train, to run ahead of cab and line switch to head in such track. After getting train into this track, engine is cut off and run around the yard lead to opposite end of train, picks up caboose, and returns to the freight station to tie up.

Trains from the south end pull into the yard through south wye, head down yard ladder until an open track is found, then head into such track, meanwhile dropping caboose on the south wye so the mill engine can attach quickly to a cut of cane and get it ready for dumping. South end trains usually include Florida East Coast connection, as well as Watson, Bare Beach and Ritta pickups, and average probably 75 or 80 cars to the train, oftentimes run as high as 115 cars which we try to observe as a train limit for both loads and empties.

Q. After the delivery of the trains what, if any, additional duties devolve upon the train and engine crews?

A. After the delivery of the trains, the engine and cab are taken off, there are no regular duties in connection with cane service. As to the crew and engine and cab, they have to be returned to the freight station through south wye Sugar Junction and north wye Clewiston, cleaning engine fire and dumping cinder pan at some point en route, frequently on some part of the sugar yard where clinkers are needed on the roadbed. After taking water, the caboose is set to cab track and engine to engine track opposite coal [fol. 820] car, conductor registers his train and crew is re-

lieved. Whenever an accident of any kind occurs en route involving the sugar mill's equipment, such as a broken knuckle, burst air hose, defective wheel or brake rigging, it is the crew's duty to make report of such occurrence in writing to the Sugar Corporation, delivering it any removed defective equipment. Our crews also leave a written list at the Sugar Corporation office at scale house, showing how many cars were left outside at each hoist and reporting any unusual condition or occurrence noticed, including such notice as they might have received from Florida East Coast crew, Lake Harbor.

It should be observed that in entering and leaving the mill yard, our engines always do so through the south wye. This principally is because the north wye is often blocked with cars left there for through trains to pick up, such as molasses, sugar, bagasse, etc. This method of entering yard keeps the engine and cars turned in one direction, however.

Q. Mr. Dowling, while you have before you the map marked Exhibit No. 167, I want you to look at the inset. That as I understand shows the tracks of the United States Sugar Corporation at its mill, is that correct?

A. I believe so, yes.

Q. At Clewiston?

[fol. 821] A. Yes, sir.

Q. Are you familiar with the way in which the cars of cane are handled by the sugar company after arrival at the tracks shown in the inset? In other words, are the cars moved over to the washer shown on the left hand side?

A. Yes, sir.

Q. Is that right?

A. Yes, sir.

Q. Are they then switched back again to the scales as shown on the map?

A. That is correct.

Q. Is all of that switching performed by the Sugar Company with its own engines and crews and is it purely an intraplant operation?

A. That is correct.

Q. Do the railroads have anything to do with it?

A. No, sir.

Q. Just one more thing, Mr. Dowling: In the course of his

testimony, Mr. Patterson had something to say about the expenses for drainage purposes in the territory in which the cane is grown. Do you wish to make any observation in that connection?

A. We have operated a number of work trains to the Clewiston area to help control water. Of course, the roadbed of the railroad is a natural dike. It has to be. The [fol. 822] most recent case I recall, Mr. Gwathmey, was about—it was in September, 1947. Some farmer down near Lake Harbor called in when I was chief dispatcher and asked that a train be operated and some roadway forces sent to help him control a dike. Of course, we recognized Mr. R. Y. Patterson as an authority on water control and I got in touch with Mr. Patterson through our general agent and got his opinion as to the need for service and materials and my recollection is that we operated the train on that particular instance.

We have operated a number of trains into the Clewiston area for the general purpose of controlling water. There is a dual purpose, of course, in saving our road bed.

Q. So that if I correctly understand you, the railroads are subjected to a considerable amount of expense themselves in connection with this matter of drainage, is that correct?

A. That is correct.

Q. Now, you heard Mr. Cecil Jones testify about the number of cars handled per train. Did you wish to make any comment upon that?

A. Mr. Hicks has covered that right well. We run a number of trains out of Clewiston with caboose only. It's been my understanding and the operating people's understanding that we had to handle 15 loads into the mill in order to protect the minimum train load to obtain the rate. We have [fol. 823] observed that. There are many trains though operated with less than 60 cars. I know we have run them, run many a train from Clewiston cab light and running when we often bring trains in with only 15 cars. But the average number of cars moving from all hoists on the north end, I would say, runs 35 to 40. I don't believe there's ever been a 60 car train moved from the north end of the sugar mill on the north end runs.

Q. Mr. Young in his testimony dealt with three loco-

motives he said were used by the railroads. The Coast Line, as I understand, it has three locomotives assigned to the service?

A. Four. They use three locomotives constantly but they assign four of them to take care of the inspections and repairs, swapping these engines off. It is about 140 miles from our shops to Clewiston and we assigned four engines to the cane service exclusively for the use of that service.

Q. That is Coast Line alone?

A. Yes, sir.

Q. Not to mention the Florida East Coast?

A. That is right.

Q. Do you wish to make one or two other comments about the testimony of Mr. Young? You handed me a memorandum. I will let you look at that.

A. Of course, our terminal overtime expense at Clewiston [fol. 824] is built up by every delay we have in the yard. In order to switch cars within the sugar yard, the sugar company bleeds the air off of the cars and by doing that, in order to avoid standing and holding the valve open, they will put a stalk of cane in there. Now a conductor finding the brake inoperative and he will look around and find a stalk of cane still in there with bleed cock still open.

By Comm. Patterson:

Q. They inspect it for air on every one of those trains; they'd find it at their normal inspection. That wouldn't take any additional time?

A. That is correct. Of course, the item of coal in the Clewiston cane train service, we use the best coal that we receive on those trains, Clinchfield and Virginia coal. Of course, it is a long way from Virginia and the Clinchfield area to Clewiston. It is about as far as we haul coal and I might say here all during the war when we were using the proportion of *of* real estate, you might say, in our coal and our main line passenger trains were suffering horrible delays, the trains operating in the cane service were operated without delay because of the coal. Our main line suffered delays and used poor coal and had to stop and clean out the fire box. Of course, we are going into the five-day week on September the first. It is going to vastly increase the operating expenses. We have clerks and operators and

dispatchers and porters who will be affected by that. The [fol. 825] dispatchers,—there's been some testimony about our dispatchers. I have dispatched these trains. Normal operation last season required operation of 16 dispatched trains each 24 hours which roughly I'd say represents 20 to 30 percent of dispatcher's duty. Of course, that is a terrible expense and it is going to be increased September 1st.

I call attention to the fact that vacation cost for train and engine crews were almost doubled yesterday, July 1st. We have a terrible expense of——

Comm. Patterson: Everything on that line must be terrible.

A. It is terrible. It is with the cane. And we have pretty bad expense with deadheading of crews from our terminal at Lakeland. They deadhead back and forth because of seniority, normal sickness and normal changes of crews and a great deal of that is company expense, 143 miles each way.

Of course, at the outset of the season, we have to run extra service to Clewiston in order to get crews and power in place and at the end of the season we have to operate extra service to put them back in place.

By Comm. Patterson:

Q. Isn't that normal operation on any branch line?

A. It is, but there is no compensation.

Q. But it is no different here than it would be on any branch line?

A. That's right.

[fol. 826] Mr. Gwathmey: That's all.

Cross-examination.

By Mr. Pettijohn:

Q. Did I understand you to say deadheading? The crew exercising seniority rights was paid by the company?

A. I said a good deal of deadheading was paid for by the company.

Q. But when he exercises seniority right, the company is not put to any additional expense?

A. I think he is exempt from payment of deadhead.

Q. You spoke of some drainage work, the company sent

a work train down there. That wasn't the contribution of the company?

A. Contribution—but——

Q. But the cost was included in the rates of the railroad and that is one reason you are asking for an increase in the freight rates?

A. I say the expense of operation of this work train and the expense of the use of the roadway crews at this point was an expense of the railroad and that is in connection with certain testimony by the railroads not contributing to the drainage.

By Comm. Patterson:

Q. The railroads charge that into operating expense?

A. Possibly it was.

[fol. 827] Q. That is part of the normal operating expense.

By Mr. Pettijohn:

Q. Is it not a contribution in the sense that the railroad gives that much?

A. That was done at the request of the people in the territory for the purpose——

Q. Between what terminals do the trains which handle this sugar cane operate?

A. From Clewiston to Lake Harbor and Clewiston to as far as Gramlin. Their home terminal is Lakeland.

Q. It is handled by through trains operating from Lakeland to Lake Harbor or do they make a turn-around?

A. No, by local trains. By establishing a local terminal at Clewiston and sending in to that terminal from Lakeland.

By Comm. Patterson:

Q. You say you assign a crew from Clewiston both ways to Gramlin in one direction and over to Lake Harbor in the other direction and he stays there and operates during the cane season?

A. Yes, sir.

By Mr. Pettijohn:

Q. He is a turn-around man?

A. Yes, sir.

Q. Does he operate under a schedule?

A. Yes, sir, rigid schedule.

Q. Do they keep the schedule pretty well?

A. Yes, sir.

Q. Is much overtime paid on those runs?

[fol. 828] A. Plenty.

Q. In other words, the schedule provides for an overtime?

A. It does not. The overtime is built up by arbitraries. We don't once a week pay a man overtime for service in excess of eight hours.

Q. It is terminal overtime?

A. Yes, sir.

Q. At Clewiston, generally?

A. Yes, and hostling, and occasionally extra moves.

Q. You maintain any switch engines at Clewiston?

A. No, sir.

Q. In the spotting of these sugar cars for loading, as far as placement is concerned, is it any different from the placing of a car at any industry?

A. No, sir, I would say it is not because all you have to do is line the switch and throw the derailer off the track and put the car in, but you may have to put in at the opposite end of the car or track or store it until there is room in the track.

Q. Don't you have to do that also at certain industries?

A. In some large industries I have observed, and no doubt it has come to your attention, where cars have backed up and it is necessary to place embargoes.

Q. Is there much real difference between the services performed in connection with the transportation of sugar cane [fol. 829] to the mill, except perhaps as to the safety proposition, the fog and the slow running time, than there is on any other section of your road down in Peninsular Florida?

A. I don't think that there is except for the fact, of course, you understand you are operating a locomotive backwards. The engineer is on the wrong side to see his normal approaches, to find his spots for applying the brakes to stop. His speed is restricted; his view is obscured. The sugar

cane service is peculiar to itself and the only way you could give the picture you are asking is to go down and look yourself.

Mr. Pettijohn: That is all.

Comm. Patterson: Any further cross examination?

By Mr. Hillyer:

Q. Mr. Dowling, on your exhibit No. 167, did I understand you to say all of the tracks marked in heavy white are owned by the Coast Line?

A. I said it was my understanding that certain tracks were owned by the Coast Line. As to the ownership of the tracks, I cannot testify possibly to that because I have never seen any deeds on them. I don't know who owns them. I assume we do. The main line from Gramlin to Lake Harbor, the loading tracks owned by the Sugar Corporation, as I understand are Gramlin, Benbow No. 2, No. 3, Liberty Point, Sugarton, the sugar yard at Clewiston, Ritta, Bare Beach, and Watson. I think they have an interest in Shawnee because cane is loaded. It may be it is privately owned.

[fol. 830] Q. Isn't it true where you show the dotted line and the marks "see inset" that you only own the main line there and that the Sugar Company owns the wye?

A. I cannot testify to the fact of ownership.

Q. Do you question Mr. Cecil Jones' testimony that all of that track from there into the plant and all of the track shown in the inset are owned by the sugar company?

A. No, sir, I do not question that. It is a matter of record and a fact that can be established.

Q. You spoke of holding an engine at Gramlin?

A. Yes, sir.

Q. Isn't it a fact by holding it there you save an additional train?

A. I am not able to answer that. I know that we held it on instructions of the sugar company and it was held.

Q. And they do that for your own operating economy, don't they?

A. We did it because the sugar company asked us to. I may state, Mr. Hillyer, I would like to say that that did not add any to our expense except for the fact that the engine

probably burned a few more scoops of coal. It didn't add to the overtime. It was away from the terminal and in all fairness, that had no bearing on the expense.

Q. Now, at Ritta, isn't it a fact that the Sugar Company works that track partly, at least, to save you from using [fol. 831] another train?

A. Do you mean the capacity of the track is such that we don't have to work it twice a day as we do some certain other tracks?

Q. Yes, you just work that one time a day?

A. That'a all, one time a day. At night.

Q. Now, you talked about this 15 carload minimum as though it were some imposition on you which was created by the sugar company. Did the sugar company put in that 15 car minimum or did the railroad put it in?

A. I don't know who put it in; from the testimony I have heard here today, I question whether it is in, but I don't know.

Q. Now, in placing the empties as Mr. Jones described, Mr. Cecil Jones described, on the many tracks in the plant property, isn't it a fact that they have plenty of cars there to give you about as large a train as you want to haul out?

A. No, sir, I have personally waited in that yard an hour and a half on a very recent occasion, just prior to the closing of the season, for the empties.

Q. Right at the close of the season?

A. I would say near the close. I don't recall the date. It may have been a month or two months before the season closed. I was there when it happened.

By Comm. Patterson:

Q. That is, they may have enough cars, but they don't have them available?

A. They don't have them dumped. They shove them into [fol. 832] the track as fact as they are dumped.

By Mr. Hillyer:

Q. Do you recall whether or not that particular instance was caused by a breakdown in the sugar house?

A. I do not know. I couldn't answer that.

Q. You spoke of a fourth engine being used. Was that an engine or crew?

A. Engine. There are four crews used regularly. They are used.

Q. Isn't that for the engine used in the passenger or put on the passenger train?

A. We use a passenger train to get it down. It is not regularly used in passenger.

By Comm. Patterson:

Q. You transfer engines for washout, by moving them on passenger trains and trading them?

A. That's right.

Q. Isn't that a common practice on every railroad?

A. Yes, sir.

By Mr. Hillyer:

Q. Isn't it a fact, taking normal conditions, you have only two engines working at any one time?

A. Normally I would say that, but I have seen all three engines out at the same time. That is the reason we have to keep three there.

Mr. Hillyer: Without going into the matter of changes in number of work days per week and vacations and things of [fol. 833] that kind, I would merely call attention to the fact that this case relates to Ex Parte 166 period. And that matter of present costs and those effective September 1st, is now before the Interstate Commerce Commission and will be before the Florida Commission later. So I take it they are not in issue here.

By Mr. Hillyer:

Q. You spoke of the end of the season and the beginning of the season and having to use what you might call season end trains. Isn't it a fact they take revenue freight and can take revenue freight such as raw sugar out of Clewiston?

A. Well, we have done it at times. I would say now that most of the time the regular train is able to take care of all regular tonnage on line of road and if we have at any time

used that train in handling regular tonnage, it was merely to expedite the movement of the regular train and it wasn't a necessary adjunct. We have run that train double heading two engines and three cabs from Clewiston to Lakeland with four or five sugar boxes, box cars.

Q. Now in any part of the Coast Line system, isn't it a fact you had to take engines or cabooses or particularly the engines comparatively long distances to get to a big repair shop such as you have in Lakeland?

A. I can speak only for the Tampa district. I believe as far as we run a locomotive to outlying points in the Tampa district for regular service is Fort Myers to Lakeland, 112 miles.

[fol. 834] Due to the class of power we use on Fort Myers Southern we are not able to swap those locomotives off in regular service. They are very light engines.

Q. Do you have any tonnage at Fort Myers that is anywhere near comparable with the Clewiston tonnage?

A. No, sir, we have not.

Q. Isn't it a fact that the Clewiston agency creates more railroad revenue than many of the larger cities in Florida?

By Comm. Patterson:

Q. Do you know anything about the revenue of the railroad?

A. No, sir.

By Mr. Hillyer:

Q. Now, your testimony gave me the impression these trains were run awful fast and on split time schedules for some reason. That trip from Gramlin to Clewiston, what is the distance of that, about 12 miles?

A. 12 miles.

Q. How long does it take to go up there and back?

A. I would say that the north end runs average three or three and a half hours?

Q. That is for the round trip?

A. For the round trip.

Q. That is around four miles an hour, something like that?

A. Well, you take into consideration the work and operation in one direction is fifteen miles per hour, yes.

Q. You didn't mean to imply sugar cane was perishable, [fol. 835] which required expedited service?

A. We are giving the sugar cane many times better service, better attention than perishables often have.

By Exam. Mattingly:

Q. Did you say it is three hours for a round trip?

A. Yes.

Q. Then it is better than four miles an hour?

Mr. Hillyer: I am running nearer eight.

By Comm. Patterson:

Q. It is all equivalent to yard operation. That is what it amounts to. You run under rule 93 all the time?

A. No, we operate under train orders.

Q. But as far as speed is concerned you operate under rule 93 because you testified they had trains in every instance that had to stop within the range of vision or even shorter. So they are yard operations as a pratical matter?

A. That's right.

Mr. Hillyer: That's all, Mr. Dowling.

Comm. Patterson: You are excused.

(Witness excused.)

Exam. Mattingly: Before he goes, would you locate on the map just as a matter of information where sugar junction is?

A. Sugar Junction is known by the railroad as the junction leading from the main line into the sugar mill.

[fol. 836] Q. Could you identify it by any of these symbols or crosses or anything on the map?

A. Between my pose VD-949 and VD-950.

By Commissioner Patterson:

Q. Well, isn't Sugar Junction in this little square marked "inset" (See inset)? At the wye coming into the sugar mill?

A. That is correct.

By Exam. Mattingly:

Q. Is that where it is?
A. That is correct.

By Comm. Patterson:

Q. I wanted to ask one question: This whole operation between Lake Harbor and Gramlin appears from your testimony that operation is conducted under the direct instructions of the sugar mill and at their convenience?
A. Correct, sir.

Comm. Patterson: You are excused.

(Witness excused.)

Comm. Patterson: We will take a ten minute recess.

(A recess was taken for ten minutes.)

I. E. Hamilton was sworn and testified as follows:

Direct examination.

By Mr. Gwathmey:

Q. Give your name.
A. I. E. Hamilton.
Q. Where do you live?
[fol. 837] A. Pahokee, Florida. My office is at Belle Glade, Florida.
Q. You are connected with the Florida East Coast Railway Company?
A. Yes, sir.
Q. What is your position?
A. Trainmaster.
Q. As trainmaster?
A. Yes, sir.
Q. What is the extent of your duties?
A. I have general supervision of the train and engine crews and also the station forces on our Fort Pierce-Lake Harbor branch.

Q. Will you describe the handling of empty and loaded cane cars on this branch?

A. At the beginning of the cane season, that is, a few days before the sugar cane mill begins operation, the Atlantic Coast Line delivers a cut of cane cars to us each day and we distribute those at the five hoists and to the interchange track with the United States Sugar Corporation at Canal Point with our regular service. On the day before the sugar mill begins operation, we send two crews out of Miami by way of Fort Pierce to Lake Harbor. One of these crews gets an engine and caboose at Fort Pierce and is paid deadhead mileage on a passenger mileage to Fort Pierce and a total of nine hours for the 73 miles from Fort Pierce to Lake Harbor.

[fol. 838] Q. Mr. Hamilton, you have spoken several times of Fort Pierce. Perhaps you had better state just where that is located on the Florida East Coast Railway.

A. Fort Pierce is the northern terminus of the Fort Pierce-Lake Harbor branch and is located 242 miles south of Jacksonville on the main line of the Florida East Coast Railway.

Q. From what points do you obtain engines and crews to operate the cane trains?

A. We obtain the engine from Fort Pierce. But the crews we get from Miami.

Q. Just how are those,—describe that operation there of what those engines and crews from Miami do.

A. In case of a crew to be used at Lake Harbor, we deadhead these crews and pay passenger deadhead rates to Fort Pierce. The crew that takes the engine and caboose to Lake Harbor are paid local freight rate for eight hours plus one additional arbitrary hour for turning the engine and putting the train away at Lake Harbor. The other crew is deadheaded and passenger service is paid, deadhead passenger pay to Fort Pierce, 124 miles from Miami and deadheaded to Lake Harbor on one of our regular trains and is paid 73 miles local freight pay for deadhead.

Q. How many cane hoists are located on the Florida East Coast and between Lake Harbor and Canal Point?

[fol. 839] A. Five.

Q. Describe the interchange operation at Canal Point.

A. At Canal Point we back the entire train around the

curve over the very busy road crossing to the cane interchange track. There we make a switch cutting off the caboose which we put on the end of the loaded cane cars and shove the empties either into the interchange track or down the sugar company track, whichever the case may be. Then we pull the loaded cars out to our main line and shove them down the length of the train and run around this train in a 79-car passing track that we have recently built, principally to take care of this movement. Around this curve it is practically impossible to test hand signals, so it is necessary to install an electric signaling apparatus so that the train man can signal the engineer to go forward or backward, as the case may be.

Q. How much time does the interchange of cars consume?

A. About 30 minutes.

Q. How many cars of cane do you ordinarily pick up at Canal Point?

A. That caries considerably. Sometimes we get only 15 or 20 and we have times when we do get 60 cars or more cars, but my experience has been that the average would be about 30.

Q. About 30?

A. Yes, sir.

Q. How many cane trains do you operate daily?

[fol. 840] A. Three.

Q. Three?

A. Yes.

Q. How many men per crew?

A. Five.

Q. How are they paid?

A. For each run. Each turn-around run, between Lake Harbor and Canal Point, they are paid eight hours plus an arbitrary hour at Fort Pierce and this is paid at branch line rates which is the same as local freight rates.

Q. Do all five men in the crew get this additional hour?

A. Yes, sir.

Q. How long do these crews average being on duty?

A. From 4 and a half to 5 hours.

Q. Are you able to use these crews for any other purpose?

A. Under our working agreement with the men we have a right to use them for any switching that might be necessary en route. However, the demands of the sugar corporation

are such that we are only able to use these crews for any other switching except in extreme emergency.

Q. You are only able to use them in case of emergency?

A. Yes, sir, and then only for a few minutes at a time.

Q. If you were able to use these crews for switching at packing houses on the line, could you reduce the overall operating cost of this branch?

[fol. 841] A. Considerably.

Q. Why do you operate cane trains on timetable schedules?

A. Our experience has been that we can keep these trains on a time operation and better serve the sugar company by operating them on a timetable schedule.

Q. Your experience in that respect, I take it, is similar to the Coast Line which has been described here?

A. Yes, sir.

Q. Do you give the cane trains preference over the other trains on this branch?

A. Positively.

Q. Does this cause additional expense?

A. Yes, in many cases we delay other trains in order to give the cane trains the right of way. In many cases this results in overtime for other crews.

Q. How about deadhead expense?

A. We have a considerable amount of deadhead expense because in some cases of relieving men on account of exercising seniority, being off on account of sickness and other reasons.

Q. Are the various hoists on your line active?

A. Yes, all five of them are active. However, we do not usually have all five of them operating any one day because we have the sugar company stagger their holidays, week-end holiday. But usually we pick up that two or more. Set out cars at and pick up loaded cars at two or more.

[fol. 842] Q. Is there anything further you want to say, Mr. Hamilton, about the operation of your line?

A. I believe not.

Commr. Patterson: Cross examination?

Cross examination.

By Mr. Hillyer:

Q. When you spoke of a road crossing, you didn't say what kind. Was that another railroad crossing or highway?

A. Highway crossing. We have to protect it with flagmen.

Q. Is that electric signal put in only on account of sugar cane traffic?

A. Yes, sir.

Q. How many trains a day do you have on that run in the Lake Harbor region during the vegetable shipping season?

A. At the height of the season we sometimes have as many as four trains in each direction operating in this territory. In addition to the cane trains.

Q. Can you give us an idea of the volume of cars of vegetables per season handled by you on that line?

A. During the '47-'48 season we handled something like 7600 and for the '48-'49 season, we handled something over 8,000 cars.

Q. Is the majority of it spotting of empty refrigerator and the picking up of the loads of that 7600 or 8,000 along this same line between Lake Harbor and Canal Point?

[fol. 843] A. Yes, sir.

Q. Isn't it a fact that you have difficulty in making the exact closing time for the schedule of those trains?

By difficult, I mean you have a very close working margin, almost to minutes in pulling those trains out of there to meet their schedules?

A. Yes, sir, our closing hour is 11:00 p.m. and at that time there are no trains, cane trains on the railroad.

Q. And then you have to pick up the vegetables all along that line from the loading platforms and packing houses?

A. That's right.

Q. Do you do the spotting of the empty cars at the packing houses for the vegetables?

A. Yes, sir.

Q. Do you have any petroleum coming inbound in that same region, petroleum products?

A. A very modest tonnage.

Q. Do you have some tank cars?

A. Some tank cars.

Q. Do they require spotting,—individual spotting?

A. Yes.

Q. Do you keep crews assigned during the perishable season for that particular traffic?

A. Which do you have reference to?

Q. Vegetable traffic?

[fol. 844] A. Yes.

Q. Are your schedules timed very closely for deliveries in eastern markets in New York and so forth from point of origin?

A. They are.

Q. Are they run as expedited trains?

A. Yes.

Q. Now, isn't it a fact that as far as the trains are concerned, you have to pay the men for much more time than they consume in the operation itself, including the stopping at the loading hoists on your line?

A. You have reference just to cane?

Q. Yes.

A. Yes, sir.

Mr. Hillyer: That's all, thank you.

Comm. Patterson: You are excused.

(Witness excused.)

Mr. Gwathmey: I want to recall Mr. Hinnant to make comments on several exhibits presented by Mr. Maurer. He will be our last witness.

C. L. Hinnant was recalled to the stand and testified further as follows:

Direct examination.

By Mr. Gwathmey:

Q. Mr. Hinnant, do you have some brief comments which you wish to make with reference particularly with to cer-

[fol. 845] tain exhibits offered in this case by Mr. Maurer?

A. I do.

Q. Please proceed.

A. Mr. Maurer's exhibit 110 through 117 show rates that apply on lumber from various West Florida and Georgia origins to representative points in that, but he does not indicate the distances.

I have two illustrations to show that the interstate rates from Georgia origins are on higher mile for mile level than those from West Florida origin on Exhibit 110. It is indicated that the rate from Albany, Georgia, to Jacksonville is 22 cents per hundred pounds including increases through Ex Parte 166, while on Exhibit 110 the rates to Jacksonville from Chattahoochee and Panama City, Florida, are shown to be 17 cents and 22 cents per hundred pounds, respectively. The short distance from Albany, Georgia, to Jacksonville is 187 miles and from Chattahoochee to Jacksonville is 209 and from Panama City to Jacksonville is 294 miles. The rate from Albany, Georgia, for the short line distance of 187 miles is the same as the rate from Panama City, Florida, a short line distance of 294 miles.

On Exhibit 112, the rate from Pensacola, Florida, to Tampa is shown to be 30 cents per hundred pounds and on Exhibit 113 the rate from Albany, Georgia, to Tampa is shown to be 32 cents. The short line distance from Pensa- [fol. 846] cola is 456 miles, while from Albany, having a higher rate by two cents, the distance to Tampa is only 312 miles.

Mr. Maurer's Exhibits 119 through 122 show exceptions to the normal lumber rates which railroads have published for the purpose of meeting truck competition and in his testimony, he indicated that these exceptions show that the Southern Compromise lumber scale has become obsolete. I have kept particularly in close touch with lumber rates in the car lines all in the Southeast for the past 20 years and know there are relatively few exceptions to the use of the Southern Compromise scale as the basis for the present or going rates in the territory South of Virginia and Kentucky and East of Mississippi and Western Tennessee. The fact I think is indicated by a close examination of Mr. Maurer's exhibits 119 through 122. Take, for example, his exhibit 119 which shows truck competitive rates lower

than the normal rates from Georgia, Florida rates published in Agent Spaninger's Florida Southern Lumber Tariff 737-B, ICC 959. Of the 279 point to point rates shown, 253 are published or apply on cross ties only. Of the remaining 26 point to point rates, ten are practically duplicates, as rates are shown from the same ten origins to each of Jacksonville and South Jacksonville, which are two parts of the same community.

In exhibits 120 and 122, many rates are shown as normal rates which are not on the basis of Southern Compromise lumber scale. I do not question the correctness of the rates [fol. 847] shown as being the normal rates. But the fact is that the Southern Compromise lumber scale was not used as the basis for the normal lumber rates between the South and points in Virginia except Danville, Virginia, now between points in Kentucky nor in all instances between points in Tennessee and those in Kentucky.

On page 1 of exhibit 120, there is shown about the middle of the page, a truck competitive rate of 14 cents and a normal rate of 20 cents from Louisville, Kentucky, to Water Works, Kentucky. The distance between those points is less than 20 miles and the Southern Compromise lumber scale for distances of 20 miles and under is only 7 cents per 100 lbs. including 162 and 166 increases.

On page 3 of exhibit 120 at the sixth line there are shown rates from Elkhorn City, Tennessee, to Johnson City, Tennessee, of 16 cents truck competitive and 21 cents normal. The distance from Elkhorn City to Johnson City is 120 miles and under the Southern Compromise lumber scale, the rate for 120 miles is 16 cents.

In Exhibit 121 there have been several duplications noted in an incomplete check; Ellijay, Georgia, to Atlanta, Georgia, is shown for lumber on page 1 at line 21 and for cross ties on page 2 at line 46. From Atlanta Junction, Georgia, to Atlanta and Roseland, Georgia, and from Blueridge, Georgia, to Atlanta, Georgia, are shown on page 1 [fol. 848] at lines 17, 19 and 20 for lumber and again on page 3 at lines 9, 10 and 11 for lumber.

Mr. Maurer testified in connection with exhibit 121 that every important city in Georgia has truck competitive rates which are lower than the normal rates. In his exhibit instances of truck competitive rates are shown to Columbus,

Georgia, or Rome, Georgia, cities of approximately 60 thousand and 30 thousand population, respectively, nor to many cities of from 10,000 to 20,000 population, including Albany, La Grange, and Gainesville. There are only nine origins from which truck competitive rates are shown to Atlanta, or Doraville, or Roseland, Georgia, which are adjacent to Atlanta and in the same industrial district. Only two origins for which truck competitive rates are published to Macon, four from which they are published to Athens and one from which they are published to Augusta.

In Exhibit 122, the majority of the truck competitive rates shown on lumber are perhaps higher or the same as the Southern Compromise lumber scale. No normal rates to points in Virginia, other than Danville, are based on the use of the Southern Compromise lumber scale.

Usually the normal rates to Virginia points are higher than if made on that scale.

At line 5, on page 1, of Exhibit 122, the rates from Rich- [fol. 849] mond, Virginia, to Durham are cited, the truck competitive rate being 21 cents and the normal rate 24 cents. The short line distance is 157 miles and the Southern Compromise lumber scale rate for that distance is 19 cents. Not one of the normal rates shown on page 3, 4 and 5, nor those at lines 6 on page 2, nor those shown at line 1 through 17 or 39 through 52 on page 6, nor any on page 7 through 11 are on the Southern Compromise lumber scale.

Taking as an illustration from Weldon, North Carolina to Norfolk, Virginia, shown on line 43, page 5, the normal rate shown is 20 cents and the truck competitive rate is 14 cents. The short distance from Weldon to Norfolk is 80 miles and the Southern Compromise lumber scale for that distance is 12 and a half cents. The 14-cent truck competitive rate shown from line 7 on page 2 through line 14 on page 6 is the same as the Southern lumber scale rate for one hundred miles and the short line distances involved are in nearly, if not all, the instances less than one hundred miles.

All of page 7 through 11 and the last 14 lines of page 6 of Exhibit 122 are given to show truck competitive rates from various eastern North Carolina points of 16 cents per hundred pounds to Newport News, Virginia, and 20 cents per hundred pounds to Fort Monroe, Hampton and Phoe-

bus, Virginia. None of the normal rates shown to these destinations are as low as the Southern Compromise lumber scale and most of the truck competitive rates shown [fol. 850] are as high as or higher than the Southern Compromise lumber scale.

For example, Tarboro, North Carolina, shown on lines 10 through 13 on page 11, the short line distance to Newport News, Virginia, is 114 miles and to Fort Monroe, Virginia, is 124 miles. Hampton and Phoebus being intermediate between Newport News and Fort Monroe. Under Southern Compromise lumber scale for 114 miles the rate is 16 cents and for 124 miles it is also 16 cents, including the Ex Parte 162 and 166 increases. This is shown on page E-2, of my exhibit No. 12.

I recognized 16 origins listed on page 6 through 11, as being intermediate on the short line from Tarboro to these destinations. Some of the short line distance to Newport News as little as 60 miles for which the Southern Compromise scale rate is 11 and a half cents.

The compromise with the principal lumber manufacturers of the South, which resulted in that adoption of the so-called Southern Compromise lumber scale for the territory south of Virginia and Kentucky and east of Mississippi and the western portion of Tennessee, did not affect the rates to Virginia cities or the Ohio River crossings or points in Southern territory other than—excuse me, or points in Southern Virginia other than Danville, which is practically on the North Carolina line, nor to points in northern Kentucky. That was part of the agreement which resulted in the compromise. The pressure was afterwards brought [fol. 851] which did result in some reductions, though not to Southern Compromise lumber scale, to points in Georgia, East Tennessee and the Carolinas to the Virginia cities.

From line 15 on page 12 through line 27 on page 13 of Exhibit 122, there is shown truck competitive rates on cross ties. From South Carolina points to Wilmington and Nevassa, North Carolina. These rates were established because of creosoting plant at Wilmington and another one at Nevassa, just across the river from Wilmington. The South Carolina Public Service Commission had required the establishment of very low rates on cross ties, poles and piling from South Carolina points to Charleston, South

Carolina and Spartanburg, South Carolina, at which two points there are creosoting plants.

The creosoting plant at Wilmington is run by the same company that runs the plant at Spartanburg, South Carolina. In order to permit the ties to move from these South Carolina points in between Wilmington and Charleston, so as to go to Wilmington, in competition with Charleston or to Nevassa in competition with Charleston, we established the same scale of rates from these South Carolina points, to Wilmington and Nevassa, as had been required by the South Carolina Commission to Charleston.

On page 15 through 20 of the Exhibit 122, there is shown truck competitive rates from Eastern North Carolina to [fol. 852] Norfolk, Virginia, and points in Virginia intermediate to Norfolk. The rate shown here, like those on page 7 through 11 of this exhibit, are not the Southern Compromise lumber scale rates, so far as the normal rates are concerned and the so-called truck competitive rates are in most instances, if not all, higher than the Southern Compromise lumber scale rates.

That is all.

Q. Mr. Hinnant, as I recall it, Mr. Maurer made reference to some tariff which publishes rates on lumber and related articles applicable in connection with the water movement from South Atlantic ports. Do you remember that?

A. I remember that. The tariff he refers to is the one known as the port lumber tariff.

Q. What have you to say about rates in that?

A. So far as the interstate rates are concerned, they are applicable only on lumber and related articles moving to the South Atlantic ports or Tampa for export or for coastwise movement or for intercoastal movement. That is, for reshipment beyond the ports in barge or vessel.

The interstate rates shown in the port lumber tariff are,—I'd call them a hangover from rates we had in on lumber to the ports before the general revision of domestic lumber rates, which were made in 1940, and we just have not been able as yet to get around to link up the export, coastwise [fol. 853] and intercoastal rates on a basis which is comparable with the domestic adjustment on lumber to the ports.

Those rates are sometimes higher and sometimes lower than the domestic. Generally, they are lower.

Q. Is that all you have to say?

A. That is all.

Cross-examination:

By Mr. Maurer:

Q. Mr. Hinnant, in the port lumber tariff to which you referred, do you know whether or not there are published rates from practically all points in Florida to the ports on a lower basis than the rates fixed by the Florida Commission?

A. I believe that is the case and cancellation of those rates from the port lumber tariff was simply an oversight at the time we published the present domestic intrastate Florida rates.

Q. Haven't those rates been in effect for many, many years?

A. I said a while ago, the rates that are in that tariff are just a hangover of what was in effect before we attempted the Southern lumber revision.

Q. Isn't it a fact that by leaving these rates in effect, you did not take full advantage of the rates that the Florida Commission gave you in the Florida Commission lumber case?

A. I am afraid it is. When you called that fact to my attention two or three days ago, it was the first knowledge [fol. 854] that I had that the rates intrastate to the ports proper in Florida had not been cancelled.

Q. Somewhere on Exhibit 119 it shows cross ties to South Jacksonville, only I believe you said 110, 111, or 112. Rates on lumber to South Jacksonville. Isn't it a fact that if time could be taken to do so, that list could be expanded many numbers of times to include not only cross ties and lumber but everything in the lumber list?

A. You could do that from the Florida points to Jacksonville and Tampa. I haven't thoroughly checked the tariff. I think you are right. They are left in this intrastate. I said that is purely an oversight on the part of the publishing agent.

Q. Have you any idea of the size income Florida lines

could have secured had they taken advantage of the cancellation of these rates and operation of higher Florida scale?

A. No, I haven't attempted to figure that out. I have had no opportunity because, as I said, until I got here and you brought the matter to my attention, I didn't know they had been left in for intrastate.

Q. Judging from your knowledge of lumber to Florida and ports, do you think additional revenue you might secure would substantially reduce revenue loss? You claim in exhibits for the computations you made in the test period?

A. I don't think it would reduce it substantially. It would reduce it some.

[fol. 855] Q. The rates published to the ports also include the other Florida ports of Fernandina, Tampa, Port Tampa and other points in the vicinity of Tampa, do they not?

A. I haven't looked at that tariff for a long time. Generally speaking, the rates published at Jacksonville, on export lumber, outgoing lumber, are also published to Fernandina, on almost all traffic. The same rates that are published, either domestic or going out of the state, to Tampa are published likewise to Port Tampa.

Mr. Maurer: That is all I have, thank you.

By Mr. Hillyer:

Q. Isn't it a fact that you have—that there is a lot of traffic that is in Florida which moves through West Palm Beach in connection with car ferry to Cuba?

A. Did you say from or through Florida?

A. Both from and through.

A. I don't know of any that moves from Florida. There may be some moving from Florida through Port Everglades.

Q. To Cuba?

A. There is a right good movement through Florida to Port Everglades. For movement to Cuba.

Q. Now, what kind of water service is available through the Port of West Palm Beach?

A. I don't know that. I am not familiar with that.

Q. Isn't it a fact that there is quite a heavy movement of traffic by water through the Port of West Palm Beach?

[fol. 856] Mr. Gwathmey: From where?

Mr. Hillyer: Pretty near everywhere. Generally.

A. I really don't know. I don't know what that operation is from West Palm Beach.

Q. Isn't there a lot of import traffic moving in those ports, particularly West Palm Beach, coming from Cuba and the islands and moving by rail beyond?

A. I understand there is some movement there, but the Coast Line doesn't reach West Palm Beach and I am not too familiar with that.

Mr. Hillyer: That's all.

Exam. Mattingly: Any further questions?

(No response.)

Exam. Mattingly: Witness excused.

(Witness excused.)

Mr. Gwathmey: The railroads have nothing further in the 13 Section case.

I would like to call Mr. Parsons of the Florida East Coast merely for the purpose of having him confirm the testimony put in by Mr. Hicks with reference to the sugar cane movement. May I do that now?

Exam. Mattingly: All right.

R. K. Parsons was sworn and testified as follows:

[fol. 857] Direct examination.

By Mr. Gwathmey:

Q. Your name is R. K. Parsons?

A. Yes, sir.

Q. You are connected with the Florida East Coast Railway, are you not?

A. Yes.

Q. In what capacity?

A. General Freight Agent of the railroad.

Q. Are you familiar with the rates on sugar cane, moving to the United States Sugar Corporation, at Clewiston?

A. Yes, sir.

Q. From points on your line?

A. Yes.

Q. Are you familiar with the testimony which Mr. Hicks has put in with reference to the rates on cane?

A. Yes, sir.

Q. Do you desire merely to adopt and concur in what Mr. Hicks has said?

A. Yes, sir, I do.

Mr. Gwathmey: That is all.

Mr. Hillyer: No questions.

Commr. Patterson: You are excused.

(Witness excused.)

Mr. Gwathmey: That is all, Mr. Commissioner, for the railroads.

[fol. 858] Mr. Hillyer: We have just a few points on rebuttal. I would like to recall Mr. Young.

PAUL L. YOUNG was recalled to the stand and testified further as follows:

Direct examination.

By Mr. Hillyer:

Q. Mr. Young, did you hear the testimony of the Florida East Coast operating witness a few minutes ago when he said there was one hour additional given over and above the eight hours?

A. Yes, sir.

Q. What do you understand to be the facts?

A. The extra hour arbitrary only applies to the engineer and the conductor. The balance of the train crew does not get paid for that hour and my understanding that the cars that were furnished for the Florida East Coast, $66.85 includes that hour arbitrary paid to the two men.

By Comm. Patterson:

Q. What is the purpose of that arbitrary hour, do you know?

A. No, I don't.

Q. I was curious to know under what circumstances they separated the pay of a crew. For instance, a train crew, as distinguished from the engine crew. If one member of a train crew gets no pay so far as arbitrary is concerned?

A. That is my understanding.

Q. So far as the engine crew is concerned, the engineer [fol. 859] gets paid for one hour more?

A. In some cases, in preparing of engines and things like that, he does.

By Mr. Hillyer:

Q. On your Exhibit 156, page 3, in the first figure, $66.85, would his testimony cause you to change that figure?

A. No, sir.

Q. It would still be the same?

A. It would still remain the same.

Q. Now, another witness early in the proceeding, I think, questioned the amount of labor on one of these sheets of Exhibit 156 and there was discussion about that and whether it would increase, and to what extent, your total results. Have you recomputed those figures on the basis of the objection that was made to your accounts there?

A. Yes, sir, that was in the maintenance of way where the labor used in maintenance was, I believe, during the discussion was computed about 25 percent greater than what is shown on my study and since that time I have looked at the annual report for the Atlantic Coast Line and computed from the total hours of straight time and the compensation paid and I find that the average wages paid per hour was only 14 percent higher than the figure what I used in arriving at mine. And using this figure which was 14 percent higher, the increase in labor only amounted to approxi- [fol. 860] mately $6,000, and bringing that all the way through, increasing the payroll taxes and carrying it through the other computation, it changes the total maintenance of way and structures approximately $7,000 and would be carried over to the summary.

Q. And is the figure of $96,000 at the bottom of page 1 of Exhibit 156—would that go up by about $7,000?

A. It would change the total to a little over $103,000.

Q. Do you have it worked out more accurately?

A. $103,170.76.

Q. Now, if that was carried through, would it change any other figures on page two?

A. No, sir.

Q. Page 3?

A. It wouldn't change any figures on page three, but I have made a change in page three from the cross-examination that Mr. Gwathmey brought out that I had 60 cents per train mile as my estimated fuel for locomotive fuel and since that time I went back and checked the Annual Report again and find that what he was trying to develop there, that 75 cents per ton was the correct cost and I recalculated that figure and it increased by fuel cost there by $5,098.20.

Q. $5,098.20?

A. Yes, sir.

Q. And that would be added to your total cost of train operation on that sheet?

[fol. 861] A. Yes, sir.

Q. Have you any other recalculations as to station services?

A. No, sir.

Q. Or locomotive depreciation?

A. No, sir.

Q. What will the total in the summary on page 4 add up to if these changes are made?

A. $277,144.51.

Q. How would that change your operating ratio?

A. It would change my operating ratio from 63.6 to 69.1 and then the ratio that is usually used in making your operating comparisons which is computed by leaving out your payroll taxes, that then would produce a ratio on that basis of 67.4.

Q. Which do you think would be more accurate, your original calculations, or those which you have just indicated?

A. I think the ones that I have just indicated would be closer as an approximation of the cost, although they are known to be somewhat overstated, generally. Although the transportation expense has not included the cost of dis-

patching trains and that particular expense would be rather difficult to compute and charge out to this item here. But even allowing for that, it would take at least—well, it would take $4,000 to change the operating ratio even one point. So that the inclusion or exclusion of that would change it very [fol. 862] little.

Q. And you had no method of apportioning the dispatching time between the sugar cane and the balance of the traffic? It that right?

A. That is right.

Q. Mr. Young, when you undertook this study, was any direction given you as to any end result to be achieved?

A. No, sir, I wouldn't take it under any circumstances like that. They showed me what they had done and I told them I didn't like that, it didn't follow the theory of cost finding that is used on the railroad.

Q. Referring to Mr. Patterson?

A. So that they left it to me to devise a formula and method of making computations and furnished me figures from books and records that were available to the sugar company.

Mr. Hillyer: That's all.

Cross-examination.

By Mr. Gwathmey:

Q. You knew what you were trying to prove?

A. I knew what they wanted me to prove. Wait a minute. Let me put it differently. I know what they hoped I would prove.

Q. As I recall, you say you live in Houston, Texas?

A. Yes, sir.

Q. How many times have you been to Clewiston, Florida?

A. Just one time.

Q. One time?

[fol. 863] A. Yes, sir.

Q. When was that?

A. Last week.

Q. You were there last week?

A. Yes, sir.

Q. How long did you remain?

A. Three days.

Q. And your entire knowledge of the operation down there of the railroads, as well as the sugar company, is based upon your observations you made during the three-day stay there and upon the information you got from the representatives of the sugar company? It that right?

A. Yes, sir.

Q. Was the cane mill operating while you were there?

A. No, sir.

Q. When did you say you were there? About a week ago?

A. Yes, sir.

Redirect examination.

By Mr. Hillyer:

Q. Have you been engaged in that continuously, day and night ever since your arrival there for the preparation of this study?

A. Oh, yes, I have been working on it ever since I started last week in Clewiston, all the time we have been here, too, has been devoted to this study.

Q. Before you went to Clewiston, did you have made [fol. 864] available to you Mr. Patterson's studies and the record in the other case?

A. Yes, sir, it was sent to me in Houston and I studied that prior to the time I came to make the actual survey.

Q. That was some time ago?

A. Yes, sir.

Mr. Hillyer: That is all.

Comm. Patterson: You are excused.

(Witness excused.)

Mr. Hillyer: I have just a little bit on the I&S case I would like to put on.

Mr. Petteway: I wonder if we can't finish the 13 section case?

Comm. Patterson: Yes, we will finish the 13 section case first.

Mr. Gwathmey: I'd like to ask Mr. Hamilton one question about a statement Mr. Young just made on the witness stand. May I?

Comm. Patterson: All right, you may proceed.

I. E. Hamilton was recalled to the stand and testified further as follows:

Direct examination.

By Mr. Gwathmey:

Q. Did you hear the statement just made by Mr. Young?

A. You mean in regard to the arbitrary fee paid our crew [fol. 865] at Lake Harbor?

Q. Yes.

A. I was testifying from my knowledge of the various working agreements and thought perhaps I had made a mistake. I contacted the Assistant Superintendent of our railroad at New Smyrna Beach and he confirmed that. All members of the crew receive it. The engineers, firemen, conductors and trainmen.

Mr. Gwathmey: That's all.

Mr. Hillyer: That's all.

Mr. Hillyer: May we have the privilege of having Mr. Young make any recalculation on that basis or on submitting it, or can you do it now?

Comm. Patterson: He can furnish that for the record.

Paul L. Young was recalled to the stand and testified further as follows:

Direct examination.

By Mr. Hillyer:

Q. Do you have that calculation?

A. I made the calculation, but I have erased it. It amounts to about $3,000, which wouldn't change the final result one point either way. $3,000 odd dollars would run the ratio up to 70 percent.

Q. That would run your total expenses on sheet four up to about $280,000, roughly?

A. Yes.

Mr. Hillyer: That's all.

[fol. 866] Comm. Patterson: You are excused.

Mr. Petteway: Is that all the testimony in the 13 section case?

Mr. Gwathmey: It is all we have.

Mr. Hillyer: It is all we have. Off the record.

Comm. Patterson: Off the record.

(Discussion off the record.)

Comm. Patterson: On the record. If that is all the evidence, the case is closed.

MOTION OF FLORIDA RAILROAD AND PUBLIC UTILITIES COMMISSION TO DISMISS PETITION

Mr. Petteway: Before you close the case, I have a motion I'd like to put into the record:

Comes now the Florida Railroad and Public Utilities Commission of the State of Florida, and Richard W. Irwin, as Attorney General of the State of Florida, and moves the dismissal of the petition herein and the discontinuance of this proceeding on the following grounds:

1. There is no evidence in the record herein from which the Commission can find a value of the railroad property used for the convenience of the public in respondents' local or intrastate business in Florida.

2. There is no evidence in the record herein from which the Commission can find the amount of revenue required by respondents to meet their maintenance and operating costs and yield a fair return on the value of their property dedicated to the transportation service, both interstate and [fol. 867] intrastate.

3. The evidence herein is insufficient to support a finding that Florida intrastate traffic is not contributing its fair and proportionate share of the revenue required to enable respondents to render adequate and efficient transportation service.

4. The evidence fails to show the rates complained of are abnormally low or less than reasonably compensatory or insufficient to cover full cost of service.

5. It affirmatively appears respondents previously were earning in excess of fair return on freight operations and further increases in their respective freight rates and charges are unnecessary and unwarranted.

6. The record herein contains no reliable basis to ascertain or even approximate the revenue results to respondents under the present intrastate rates in Florida, nor what the results might be under the proposed rates.

7. There is no basis in the record herein for a finding that the present interstate rates are reasonable.

8. There is no evidence in the record herein that the rates complained of have resulted in the loss of any business by interstate shippers.

9. It affirmatively appears from the record herein that the respondents' formal distress, if any, is caused by enormous deficits in their passenger operations which they un- [fol. 868] lawfully seek to impose upon the shippers and receivers of freight.

10. There is no evidence in the record herein from which the Commission can find the amount of revenue which reasonably can be expected under the proposed increased rates or that the alteration of the intrastate rates as requested would produce additional income necessary to prevent an undue burden upon respondents' interstate revenues and to maintain an adequate transportation service.

11. It does not appear from the evidence of the record herein that the rates and charges of respondents for the intrastate transportation of property made or imposed by authority of the State of Florida cause any undue or unreasonable advantage, preference or prejudice as between persons or localities in intrastate commerce on the one hand and interstate commerce on the other hand.

12. It does not appear from the evidence herein that said rates cause any undue, unreasonable, or unjust discrimination against interstate or foreign commerce.

13. There is no evidence in the record herein from which the Commission can find the amount of revenue required from Florida intrastate freight operations in order that said intrastate freight operations may contribute their fair, just and proportionate share of the revenue requirements of the respondents.

[fol. 869] 14. It affirmatively appears that the respondents have failed to meet the burden of proof imposed upon them in a proceeding under Section 13, subparagraph 4, and Section 15-A of the Interstate Commerce Act as amended.

I am authorized by Mr. M. W. Wells, that he joins in the motion on behalf of the Florida Growers and Shippers League and the Florida Citrus Commission for whom he has appeared in this proceeding.

Mr. Hillyer: May I join in that motion as an intervenor on behalf of the State of Florida, on behalf of the East Coast Pulp and Paper Mills, the Florida Lumber and Millwork Association, the Jacksonville Traffic Bureau and the Fertilizer Manufacturers of Jacksonville, and the United States Sugar Corporation.

It is my understanding under the rules that a formal petition of intervention is not necessary in a proceeding of this kind.

Commr. Patterson: You can intervene in support of the motion.

Mr. Hillyer: And shall I file a petition of intervention in support of that motion?

Commr. Patterson: No, sir.

Mr. Maurer: May I join in the motion on behalf of the parties for whom I presented appearances.

Mr. Overton: I wish to join in the motion on behalf of the [fol. 870] parties for whom my appearance is — record.

Mr. Balkcom: I desire to join in the motion on the part of the Tampa Traffic Association for whom I have appeared here.

Mr. Petteway: I would like to make a motion that a proposed report be filed.

Comm. Patterson: Let's dispose of your first motion first. It is quite an involved motion. It will be taken under consideration and dealt with in the report.

Mr. Petteway: Thank you.

Commr. Patterson: You- motion that is already made. Now your next motion?

Mr. Petteway: I want to make a motion that a proposed report be filed in this proceeding.

Comm. Patterson: Any objection to a proposed report being filed?

Mr. Gwathmey: No, sir.

Comm. Patterson: All right, there will be an appropriate report.

Now, we will deal with briefs. How long do the parties want to file briefs?

Mr. Petteway: Do you suppose we could have any idea as to when we could get a copy of the record?

Comm. Patterson: I will leave that to the reporting company. Off the record.

[fols. 871-872] (Discussion off the record.)

Comm. Patterson: On the record.

Mr. Hillyer: This record has been taken under very trying conditions and the acoustics in here have been terrible and there have been a number of witnesses who have testified facts and figures and technical rates and mileages which are difficult for the reporters to get. We have had those experience in the past. One time it took us six months to get the record straight.

After the record is received, I would like the opportunity to check it very carefully and I would be surprised if there were not many many corrections, in spite of the ability of any stenographer who might have been here.

Exam. Mattingly: Who wantes to suggest a date?

Comm. Patterson: Off the record.

(Discussion off the record.)

Comm. Patterson: On the record. Under the circumstances, we will make the brief dates September 15 and all briefs are due September 15.

Is there anything further to come before this hearing? If not, the hearing is closed.

(At 12:15 o'clock p.m., July 2, 1949, hearing in the above-entitled case was closed.)

[fol. 873]

Schedule No. 1

BEFORE THE INTERSTATE COMMERCE COMMISSION

RESPONDENT'S EXHIBIT NO. 1

Atlantic Coast Line Railroad Company
(Includes Atlanta, Birmingham & Coast)

Net Railway Operating Income and Rate of Return on Property Investment

Year	Investment in Railway Property Used in Transportation Service, including Cash and Material and Supplies		Net Railway Operating Income							
	Total	Less Depreciation	Total Operating Revenues	Total Operating Expenses	Operating Ratio	Taxes	Amount	Percent of Revenues	Rate of Return on Total Investmt.	Rate of Ret. on Total Investment Less Depreciation
1936	$298,233,538	$263,802,537	$47,015,519	$36,815,547	78.31	$4,684,889	$4,401,089	9.36	1.48	1.67
1937	297,551,878	263,409,980	51,625,628	40,138,551	77.75	5,087,852	4,826,199	9.35	1.62	1.83
1938	301,173,586	265,747,854	47,539,967	38,529,424	81.06	4,894,434	2,198,482	4.63	0.73	0.83
1939	297,292,807	263,693,401	50,545,028	39,696,803	78.54	4,663,986	3,656,361	7.23	1.23	1.39
1940	300,901,493	266,875,891	53,543,345	42,717,118	79.78	4,826,312	3,531,275	6.60	1.17	1.32
Average Year 1936-1940	299,030,660	264,705,932	50,052,097	39,579,489	79.08	4,831,495	3,722,681	7.44	1.24	1.41
1941	312,818,707	277,828,155	72,066,750	50,515,655	70.10	8,054,020	11,294,744	15.67	3.61	4.07
1942	332,441,047	294,203,180	121,143,909	67,685,401	55.87	28,495,326	21,501,178	17.75	6.47	7.31
1943	352,162,842	308,143,169	160,812,311	87,094,633	54.16	52,217,353	16,219,839	10.09	4.61	5.26
1944	355,909,149	303,353,876	163,819,529	100,145,542	61.13	44,778,785	14,040,520	8.57	3.94	4.63
1945	366,211,374	287,556,479	146,661,332	130,274,575	88.83	6,809,519	5,492,999	3.75	1.50	1.91
Average Year 1941-1945	343,908,618	294,216,972	132,900,766	87,143,161	65.57	28,071,000	13,709,856	10.32	3.99	4.66
1946	392,688,225	309,905,646	126,103,162	113,728,023	99.19	4,400,000	5,016,954	3.98	1.28	1.62
1947	398,497,427	342,897,795	128,429,923	112,461,791	87.57	10,450,000	3,049,642	2.37	0.77	0.97
1948	410,300,597	321,156,736	136,336,690	118,287,514	86.76	10,300,000	5,126,754	3.75	1.25	1.60

Source: Reports to Interstate Commerce Commission and Records of the Company.

[fol. 874]

Schedule No. 2

Seaboard Air Line Railroad Company
(See Note)

Investment in Railway Transportation Property and Rate of Return for Years 1936 to 1948, Inclusive

Year	Investment in Railway Property Used in Transportation Service, including Cash and Material and Supplies		Net Railway Operating Income							
	Total	Less Depreciation	Total Operating Revenues	Total Operating Expenses	Operating Ratio	Taxes	Amount	Percent of Revenues	Rate of Return on Total Investmt.	Rate of Ret. on Total Investment Less Depreciation
1936	$306,337,692	$284,123,626	$38,346,055	$31,820,609	82.98	$2,540,332	$2,920,583	7.62	.95	1.03
1937	310,155,548	286,268,095	42,790,878	34,737,510	81.18	2,551,930	4,348,988	10.16	1.40	1.52
1938	312,883,141	287,298,108	40,009,744	34,183,527	85.44	3,311,956	1,449,487	3.62	.46	.50
1939	317,507,380	290,011,919	44,163,420	36,493,168	82.63	2,848,110	3,594,371	8.14	1.13	1.24
1940	323,873,496	294,338,757	48,490,966	39,270,764	80.99	3,476,947	4,404,333	9.08	1.36	1.50
Average Year 1936–1940	314,151,451	288,408,101	42,760,213	35,301,116	82.56	2,945,855	3,343,552	7.82	1.06	1.16
1941	333,730,536	302,165,350	64,608,903	48,800,722	75.53	3,862,311	10,106,964	15.64	3.03	3.34
1942	346,972,415	310,973,594	110,242,375	67,010,358	60.78	5,157,733	33,945,971	30.79	9.78	10.92
1943	358,612,709	318,561,328	137,257,803	80,823,710	58.88	22,186,791	28,704,006	20.91	8.00	9.01
1944	379,815,161	334,075,311	141,188,977	88,939,443	62.99	24,797,395	22,300,395	15.79	5.87	6.68
1945	380,540,406	315,873,254	130,210,498	111,303,778	85.48	3,208,296	11,125,533	8.54	2.92	3.52
Average Year 1941–1945	359,934,245	316,329,767	116,701,711	79,375,602	68.02	11,842,505	21,236,574	18.20	5.90	6.71
1946–Jan.-July	388,048,480	321,506,860	67,749,707	55,505,365	81.93	1,163,609Cr.	10,804,022	15.95	4.77(a)	5.76(a)
1946–Aug.-Dec.	318,413,993	236,851,054	44,653,686	37,202,144	83.31	2,651,686	3,244,741	7.27	2.45(a)	3.29(a)
1946–Year	359,034,110Avg.	286,233,607Avg.	112,403,393	92,707,509	82.48	1,488,077	14,048,763	12.50	3.91	4.91
1947	336,515,504	252,629,551	119,140,955	96,767,098	81.22	9,988,044	8,789,771	7.38	2.61	3.48
1948	360,650,038	273,617,925	132,695,409	104,324,127	78.62	12,527,153	13,187,842	9.94	3.66	4.82

Note: Seaboard Air Line Railroad Company commenced operation August 1, 1946. This statement includes results of Seaboard Air Line Railway Company and its Receivers referable to years 1936 to 1945 and seven months of 1946 and for the New Company for period August 1, 1946 to December 31, 1948, inclusive.

(a) On annual basis.

Source: Reports to Interstate Commerce Commission and Records of the Company.

[fol. 875]

Schedule No. 3

Florida East Coast Railway Company
(Scott M. Loftin and John W. Martin, Trustees)

Net Railway Operating Income and Rate of Return on Property Investment

Year	Investment in Railway Property Used in Transportation Service, including Cash and Material and Supplies		Total Operating Revenues	Total Operating Expenses	Operating Ratio	Taxes	Net Railway Operating Income			
	Total	Less Depreciation					Amount	Percent of Revenues	Rate of Return on Total Investmt.	Rate of Ret. on Total Investment Less Depreciation
1936	$114,522,059	$105,171,961	$8,614,508	$6,515,854	75.64	$770,305	$877,796	10.19	0.77	0.83
1937	84,545,981	77,783,916	9,303,206	7,123,303	76.57	901,160	741,578	7.97	0.88	0.95
1938	84,519,791	77,292,658	9,594,391	7,002,599	72.99	916,199	1,029,492	10.73	1.22	1.33
1939	85,330,932	77,792,335	9,261,367	7,133,545	77.02	781,483	743,699	8.03	0.87	0.96
1940	85,630,260	77,699,621	10,748,838	8,341,683	77.60	810,657	985,219	9.17	1.15	1.27
Average Year 1936–1940	90,909,805	83,148,098	9,504,462	7,223,397	76.00	835,961	875,557	9.21	0.96	1.05
1941	85,736,594	78,085,492	11,499,121	8,653,013	75.25	719,097	1,580,527	13.74	1.84	2.02
1942	89,378,528	81,350,289	20,838,086	11,481,207	55.10	985,376	7,873,959	37.79	8.81	9.68
1943	100,529,928	91,694,429	32,559,085	16,604,873	51.00	4,493,558	10,173,479	31.25	10.12	11.09
1944	107,141,148	97,421,980	31,730,202	19,055,811	60.06	5,666,886	5,951,599	18.76	5.55	6.11
1945	113,550,099	102,267,351	29,571,007	20,574,937	69.58	3,597,553	4,401,728	14.89	3.88	4.30
Average Year 1941–1945	99,267,259	90,163,908	25,239,500	15,273,968	60.52	3,092,494	5,996,258	23.76	6.04	6.65
1946	110,823,573	98,579,794	26,543,488	20,721,821	78.07	335,577	4,291,437	16.17	3.87	4.35
1947	110,153,301	97,349,387	27,054,334	23,683,284	87.54	551,153	1,544,281	5.71	1.40	1.59
1948	110,526,899	97,610,284	28,653,199	23,897,809	83.40	1,743,698	1,855,052	6.47	1.68	1.90

Source: Annual reports on file with the Interstate Commerce Commission.

[fol. 876]

Schedule No. 4

Atlantic Coast Line Railroad Company
Seaboard Air Line Railroad Company
Florida East Coast Railway Company
(Scott M. Loftin and John W. Martin, Trustees)

Net Railway Operating Income and Rate of Return on Property Investment

Year	Investment in Railway Property Used in Transportation Service, Including Cash and Material and Supplies		Total Operating Revenues	Total Operating Expenses	Operating Ratio	Taxes	Net Railway Operating Income			
	Total	Less Depreciation					Amount	Percent of Revenues	Rate of Return on Total Investmt.	Rate of Ret. on Total Investment Less Depreciation
1936	$719,093,289	$653,098,124	$93,976,082	$75,152,010	79.97	$7,995,526	$8,198,468	8.72	1.14	1.26
1937	692,253,407	627,461,991	103,719,712	81,999,364	79.06	8,540,942	9,916,765	9.56	1.43	1.58
1938	698,576,518	630,338,620	97,135,102	79,715,550	82.07	9,122,589	4,677,461	4.82	0.67	0.74
1939	700,131,119	631,497,655	103,969,815	83,323,516	80.14	8,293,579	7,994,431	7.69	1.14	1.27
1940	710,405,249	638,914,269	112,783,149	90,329,565	80.09	9,113,916	8,920,827	7.91	1.26	1.40
Average Year 1936–1940	704,091,916	636,262,131	102,316,772	82,104,001	80.24	8,613,310	7,941,590	7.76	1.13	1.25
1941	732,285,837	658,078,997	148,174,774	107,969,390	72.87	12,635,428	22,982,235	15.51	3.14	3.49
1942	768,791,990	686,527,063	252,224,370	146,176,966	57.96	34,638,435	63,321,108	25.11	8.24	9.22
1943	811,305,449	718,398,926	330,629,199	184,523,216	55.81	78,897,792	55,907,324	16.66	6.79	7.67
1944	842,865,458	734,851,167	336,738,708	208,140,796	61.81	75,243,066	42,292,514	12.56	5.02	5.76
1945	860,301,879	705,697,084	306,442,837	262,153,290	85.55	13,615,368	21,020,260	6.86	2.44	2.98
Average Year 1941–1945	803,110,122	700,710,647	274,841,977	181,792,732	66.14	43,006,000	40,942,688	14.90	5.10	5.84
1946	862,545,908	694,719,047	265,052,043	227,157,353	85.70	6,223,654	23,357,154	8.81	2.71	3.37
1947	845,166,232	662,876,733	274,625,212	232,912,173	84.81	20,989,197	13,383,694	4.87	1.58	2.02
1948	881,477,534	692,384,945	297,685,298	246,509,450	82.81	24,570,851	20,169,648	6.78	2.29	2.91

Source: Consolidation of the three roads' individual statements.

[fol. 877]

Schedule No. 5

Louisville and Nashville Railroad Company

Net Railway Operating Income and Rate of Return on Property Investment

Year	Investment in Railway Property Used in Transportation Service, Including Cash and Material and Supplies		Total Operating Revenues	Total Operating Expenses	Operating Ratio	Net Railway Operating Income				
	Total	Less Depreciation				Taxes	Amount	Percent of Revenues	Rate of Return on Total Investmt.	Rate of Ret. on Total Investment Less Depreciation
1936	$476,293,676	$395,340,420	$91,040,152	$65,648,761	72.11	$6,626,087	$19,257,364	21.15	4.04	4.87
1937	478,597,755	394,827,587	90,194,993	68,104,747	75.51	7,716,721	15,551,121	17.24	3.25	3.94
1938	480,928,556	392,334,738	79,394,560	61,008,799	76.84	7,114,734	11,622,971	14.64	2.42	2.96
1939	495,124,299	403,544,797	88,348,256	64,989,535	73.56	8,135,700	15,848,660	17.94	3.20	3.93
1940	486,106,300	396,005,402	98,001,627	72,057,365	73.53	10,304,935	17,187,993	17.54	3.54	4.35
Average Year 1936–1940	483,410,117	396,210,589	89,395,918	66,361,841	74.23	6,979,635	15,893,622	17.78	3.29	4.01
1941	509,325,081	414,275,470	119,569,572	78,076,815	65.30	18,212,127	25,548,223	21.37	5.02	6.17
1942	519,462,411	416,869,742	168,824,550	99,028,658	58.66	48,370,589	23,732,085	14.06	4.57	5.69
1943	536,225,828	422,997,709	208,799,302	118,152,434	56.59	67,952,136	25,513,401	12.22	4.76	6.03
1944	539,271,529	414,863,322	214,779,541	131,882,614	61.40	63,670,261	22,637,129	19.53	4.20	5.46
1945	550,768,242	405,529,713	196,541,491	146,481,016	74.53	31,609,214	22,701,472	11.55	4.12	5.60
Average Year 1941–1945	531,010,618	414,907,191	181,702,891	114,724,307	63.14	45,962,865	24,026,462	13.22	4.52	5.79
1946	553,832,737	402,330,227	169,666,274	140,483,174	82.80	18,718,595	15,595,486	9.19	2.82	3.88
1947	571,985,399	415,510,532	189,697,168	156,337,231	82.41	24,109,728	16,280,657	8.58	2.85	3.92
1948	602,114,094	439,753,695	207,271,683	169,453,493	81.75	25,366,064	21,175,636	10.22	3.52	4.82

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[fol. 880] Schedule No. 8

Atlantic Coast Line Railroad Company

Statement Showing Effect on Florida Operating Ratio of Eliminating Increases Granted by Interstate Commerce Commission on Interstate Traffic, Years 1947 and 1948

Item and Explanation	Calendar Year 1947	1948
1. Account 101, "Freight,"—Interstate—Florida	$15,688,400	$17,538,280
2. Effect of increases allowed by I.C.C., included above	2,612,119	5,220,339
3. Total Florida Operating Revenues	28,686,349	30,188,641
4. Item 3 restated (Deduct Item 2)	26,074,230	24,968,302
5. Total Florida operating expenses	24,592,531	25,409,384
6. Florida operating ratio (Item 5 ÷ Item 3)	85.73	84.17
7. Restated Florida operating ratio (Item 5 ÷ Item 4)	94.32	101.77

[fol. 881] Schedule No. 9

Seaboard Air Line Railroad Company
State of Florida

Statement Showing Effect on Florida Operating Ratio of Eliminating Increases Granted by Interstate Commerce Commission on Interstate Traffic, Years 1947 and 1948

Item and Explanation	Calendar Year 1947	1948
1. Account 101, "Freight"—Interstate	$21,412,539	$24,517,991
2. Effect of increases allowed by I.C.C.—included above	3,637,283	7,314,200
3. Total Florida operating revenues	36,292,608	40,356,048
4. Item 3 restated (Item 3 − Item 2)	32,655,325	33,041,848
5. Total Florida operating expenses	29,477,097	31,727,575
6. Florida operating ratio (Item 5 ÷ Item 3)	81.22	78.62
7. Restated Florida operating ratio (Item 5 ÷ Item 4)	90.27	96.02

[fol. 882] Schedule No. 10

Florida East Coast Railway Company
Scott M. Loftin and John W. Martin, Trustees

Statement Showing Effect on Florida Operating Ratio of Eliminating Increases Granted by Interstate Commerce Commission on Interstate Traffic, Years 1947 and 1948

Item and Explanation	Calendar Year 1947	1948
1. Account 101, "Freight"—Interstate—Florida	$13,836,213	$15,698,843
2. Effect of increases allowed by I.C.C.—included above	2,441,549	4,184,726
3. Total Florida operating revenues	27,054,334	28,653,199
4. Item 3 restated (Deduct Item 2)	24,612,785	24,468,473
5. Total Florida operating expense	23,683,284	23,897,809
6. Florida operating ratio (Item 5 ÷ Item 3)	87.5	83.4
7. Restated Florida oper. ratio (Item 5 ÷ Item 4)	96.2	97.7

[fol. 883] Schedule No. 11

Atlantic Coast Line Railroad Company
Seaboard Air Line Railroad Company
Florida East Coast Railway Company

(Scott M. Loftin and John W. Martin, Trustees)

Statement Showing Effect on Florida Operating Ratio of Eliminating Increases Granted by Interstate Commerce Commission on Interstate Traffic, Years 1947 and 1948

Item and Explanation	Calendar Year 1947	1948
1. Account 101, "Freight"—Interstate—Florida	$50,937,152	$57,755,114
2. Effect of increases allowed by I.C.C.—included above	8,690,951	16,719,265
3. Total Florida Operating Revenues	92,033,291	99,197,888
4. Item 3 restated (Deduct Item 2)	83,342,340	82,478,623
5. Total Florida Operating Expenses	77,752,912	81,034,768
6. Florida operating ratio (Item 5 ÷ Item 3)	84.48	81.69
7. Restated Florida operating ratio (Item 5 ÷ Item 4)	93.29	98.25

[fol. 884] Schedule No. 12

Louisville and Nashville Railroad Company

Statement Showing Effect on Florida Operating Ratio of Eliminating Increases Granted by Interstate Commerce Commission on Interstate Traffic, Years 1947 and 1948

Item and Explanation	Calendar Year 1947	1948
1. Account 101, "Freight"—Interstate—Florida	$1,805,176	$1,802,687
2. Effect of increases allowed by I.C.C.—included above	221,717	441,112
3. Total Florida operating revenues	3,479,336	3,284,682
4. Item 3 restated (Deduct Item 2)	3,257,619	2,843,570
5. Total Florida operating expense	4,179,304	4,324,063
6. Florida operating ratio (Item 5 ÷ Item 3)	120.12	131.64
7. Restated Florida operating ratio (Item 5 ÷ Item 4)	128.29	152.06

[fol. 885] Schedule No. 13

Georgia Southern and Florida Railway Company

Statement Showing Effect on Florida Operating Ratio of Eliminating Increases Granted by Interstate Commerce Commission on Interstate Traffic, Years 1947 and 1948

Item No.	Calendar Year 1947	1948
1. Interstate Freight Revenue A/c 101	$ 759,415	$1,020,695
2. Effect of increases allowed by I.C.C. under Ex Parte 162 and 166 included in above	56,868	257,011
3. Total Railway Operating Revenues	1,056,693	1,309,123
4. Total Railway Operating Revenues restated to exclude interstate increases on Freight Revenue A/c 101 (3−2)	999,825	1,052,112
5. Total Railway Operating Expenses	989,807	1,207,482
6. Operating Ratio (5 ÷ 3)	93.67	92.24
7. Restated Operating Ratio (5 ÷ 4)	99.00	114.77

Source: Company Records.

[fol. 886] Schedule No. 14

St. Louis-San Francisco Railway Company

Statement Showing Effect on Florida Operating Ratio of Eliminating Increases Granted by Interstate Commerce Commission on Interstate Traffic, Years 1947 and 1948

Item and Explanation	Calendar Year 1947	1948
1. Account 101	$ 785,316	$ 397,313
2. Effect of increases allowed by I.C.C.—included above	129,000	117,401
3. Total Florida operating revenues	1,067,208	580,886
4. Item 3 restated (Deduct Item 2)	938,208	463,485
5. Total Florida Operating expenses	848,142	461,198
6. Florida Operating ratio (Item 5 ÷ Item 3)	79.47	79.40
7. Restated Florida Operating ratio (Item 5 ÷ Item 4)	90.40	99.51

[fol. 887]

Schedule No. 15

Atlantic Coast Line Railroad Company

Statement Showing Effect on a System Basis on Net Railway Operating Income and Net Income, of Eliminating All Increases in Freight Rates Granted by the Interstate Commerce Commission and the Several State Commissions—Years 1947 and 1948

	Calendar Year		Calendar Year	
	1947	1948	1947	1948
	(Per Books of Account)		(Restated)*	
Operating Revenues:				
Freight	$ 95,987,384	$106,370,606	$ 80,606,611	$ 75,444,316
Passenger	21,990,538	19,971,667	21,990,538	19,971,667
Mail	2,740,983	2,864,940	2,740,983	2,864,940
Express	3,080,076	2,754,213	3,080,076	2,754,213
All Other	4,630,942	4,375,264	4,630,942	4,375,264
Total	128,429,923	136,336,690	113,049,150	105,410,400
Operating expenses	112,461,791	118,287,514	112,461,791	118,287,514
Operating ratio	87.57	86.76	99.48	112.22
Railway tax accruals	10,450,000	10,300,000	9,538,938	7,355,775
Equipment rents—Net Debit	2,442,784	2,808,387	2,442,784	2,808,387
Joint facility rents	25,706 Dr.	185,965 Cr.	25,706 Dr.	185,965 Cr.
Net railway operating income	3,049,642	5,126,754	11,420,069 D	22,855,311 D
Net income	6,003,954	7,684,913	8,465,757 D	20,297,152 D

* Restated to exclude from Account, "Freight," *only*, the effect of rate increases granted by I.C.C. on interstate traffic under Ex Parte 162 and 166, effective in 1947 and 1948, and also the effect of increases granted by the several State Commissions on intrastate traffic effective during the same years. Railway tax accruals have been decreased to recognize lower Federal income taxes under the assumed circumstances.

D—Denotes deficit.

[fol. 888]

Schedule No. 16

Seaboard Air Line Railroad Company
System

Statement Showing Effect on a System Basis on Net Railway Operating Income and Net Income, of Eliminating All Increases in Freight Rates Granted by the Interstate Commerce Commission and the Several State Commissions—Years 1947 and 1948

	Calendar Year		Calendar Year	
	1947	1948	1947	1948
	(Per Books of Account)		(Restated)*	
Operating Revenues:				
Freight	$ 94,387,552	$107,025,798	$ 78,822,504	$ 75,567,460
Passenger	15,621,362	16,094,517	15,621,362	16,094,517
Mail	2,306,815	2,740,676	2,306,815	2,740,676
Express	2,219,413	1,978,090	2,219,413	1,978,090
All other	4,605,813	4,856,328	4,605,813	4,856,328
Total	119,140,955	132,695,409	103,575,907	101,237,071
Operating expenses	96,767,098	104,324,127	96,767,098	104,324,127
Operating ratio	81.22	78.62	93.43	103.05
Railway tax accruals	9,988,044	12,527,153	7,675,044	6,654,367
Equipment rents—Net Debit	3,220,687	2,388,308	3,220,687	2,388,308
Joint facility rents—Net Debit	375,355	267,979	375,355	267,979
Net railway operating income	8,789,771	13,187,842	4,462,277 D	12,397,710 D
Net income	6,031,916	9,965,654	7,220,132 D	15,619,898 D

* Restated to exclude from Account 101, "Freight," *only* the effect of rate increases granted by I.C.C. on interstate traffic under Ex Parte 162 and 166, effective in 1947 and 1948, and also the effect of increases granted by the several State Commissions on intrastate traffic, effective during the same years. Railway tax accruals for Federal and State Income taxes have been reduced to recognize lower income taxes under the assumed circumstances.

D—Denotes deficit.

[fol. 878]

Schedule No. 6

Georgia Southern and Florida Railway Company

Line No.	Year	Investment in Railway Property Used In Transportation Service Including Material and Supplies		Total Operating Revenues	Total Operating Expenses	Operating Ratio	Taxes	Net Railway Operating Income		Rate of Return on Total Invest.	Rate of Return on Total Inv. Less Deprn.
		Total	Less Deprec'n.					Amount	Percent of Revenues		
1	1936	$15,514,443	$14,498,460	$2,301,547	$1,949,114	85	$127,529	$137,524	5.98	.89	.95
2	1937	15,431,469	14,469,551	2,408,078	1,963,818	82	161,027	241,741	10.04	1.57	1.67
3	1938	15,388,708	14,367,206	2,061,107	1,810,942	88	186,285	29,789	1.45	.19	.21
4	1939	15,275,355	14,252,568	2,309,592	1,899,643	82	177,910	118,777	5.14	.78	.83
5	1940	15,428,086	14,332,438	2,982,335	2,117,782	71	186,830	491,382	16.58	3.20	3.45
6	Avg. Yr.										
7	1936–40	15,407,612	14,384,045	2,412,532	1,948,260	81	167,916	204,443	8.47	1.33	1.42
8	1941	15,319,275	14,212,258	3,594,411	2,544,321	71	246,621	524,289	14.59	3.42	3.69
9	1942	15,306,918	14,097,923	5,202,725	3,066,197	59	814,859	995,800	19.14	6.51	7.06
10	1943	16,003,689	14,631,223	7,353,434	3,833,717	52	1,918,380	1,189,382	16.17	7.43	8.13
11	1944	16,743,689	15,303,155	6,511,350	4,076,060	63	1,195,554	809,422	12.43	4.83	5.29
12	1945	16,258,305	14,625,500	6,626,341	4,191,342	63	1,196,175	825,443	12.46	5.08	5.64
13	Avg. Yr.										
14	1941–45	15,926,375	14,574,012	5,857,652	3,542,327	60	1,074,318	868,867	14.83	5.46	5.96
15	1946	15,227,140	13,667,450	5,508,891	4,572,592	83	19,189	547,403	9.94	3.59	4.01
16	1947	15,394,579	13,921,655	6,201,458	4,807,574	78	536,064	352,081	5.68	2.29	2.53
17	1948	15,463,713	13,947,449	7,211,017	5,325,305	74	518,509	516,045	7.16	3.34	3.70

Source: Reports to Interstate Commerce Commission.

[fol. 879]

Schedule No. 7

St. Louis-San Francisco Railway Company

Property Investment, Net Railway Operating Income and Ratio Thereof to Revenues, and Rate of Return on Property Investment, Years 1936 to 1948, Inclusive

Year	Investment in Railway Property Used in Transportation Service Including Cash and Material and Supplies		Total Operating Revenues	Total Operating Expenses	Operating Ratio	Taxes	Net Railway Operating Income			
	Total	Less Deprecn.					Amount	Percent of Revenues	Rate of Return on Total Investment	Rate of Ret. on Total Investm. Less Depn. & Amtz.
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
1936	$423,617,877	$379,235,193	$47,981,639	$38,810,424	80.89	$3,538,418	$5,880,915	12.26	1.39	1.55
1937	423,523,944	378,050,864	49,020,519	41,273,268	84.20	3,194,565	4,967,011	10.13	1.17	1.31
1938	422,761,892	376,218,174	43,027,457	38,136,138	88.63	3,749,227	1,192,550	2.77	0.28	0.32
1939	421,925,573	374,000,471	45,685,303	38,359,995	83.97	3,757,097	3,886,751	8.51	0.92	1.04
1940	423,122,544	373,383,602	46,293,895	37,551,872	81.12	3,771,505	5,395,121	11.65	1.28	1.44
Average Year 1936-1940	422,990,366	376,177,660	46,401,763	38,826,339	83.67	3,602,162	4,264,470	9.19	1.01	1.13
1941	428,043,404	378,707,327	59,326,160	43,457,272	73.25	4,122,271	11,997,351	20.22	2.80	3.17
1942	432,759,042	381,091,934	85,577,649	54,754,076	63.98	4,839,991	25,874,296	30.23	5.98	6.79
1943	440,011,777	384,328,105	107,426,855	71,055,391	66.14	13,259,673	22,488,529	20.93	5.11	5.85
1944	442,873,153	382,316,119	115,982,818	79,675,842	68.70	18,370,112	17,336,113	14.95	3.91	4.53
1945	442,183,274	372,803,605	111,676,428	83,027,147	74.35	13,421,300	15,104,808	13.53	3.42	4.05
Average Year 1941-1945	437,174,130	379,849,418	95,997,982	66,393,946	69.16	10,802,669	18,560,219	19.33	4.25	4.89
1946	446,711,008	374,241,766	91,921,319	80,978,306	88.10	1,564,384#	13,394,662	14.57	3.00	.58
1947	353,069,790	262,931,739	104,157,852	82,343,845	79.06	11,658,470	10,373,299	9.96	2.94	3.95
1948	369,858,212	276,666,238	112,706,007	90,431,056	80.24	11,949,878	11,389,522	10.11	3.08	4.12

# Denotes Red.
Source: Reports to Interstate Commerce Commission.

[fol. 889]

Schedule No. 17

Florida East Coast Railway Company

(Scott M. Loftin and John W. Martin, Trustees)

	Calendar Year		Calendar Year	
	1947	1948	1947	1948
	(Per Books of Account)		(Restated)*	
Operating revenues:				
Freight	$16,897,616	$18,816,455	$14,364,467	$14,461,229
Passenger	7,586,056	7,215,475	7,586,056	7,215,475
Mail	628,195	718,106	628,195	718,106
Express	654,400	616,533	654,400	616,533
All other	1,288,067	1,286,630	1,288,067	1,286,630
Total	$27,054,334	$28,653,199	$24,521,185	$24,297,973
Operating expenses	$23,683,284	$23,897,809	$23,683,284	$23,897,809
Operating ratio	87.54	83.40	96.58	98.35
Railway tax accruals	551,153	1,743,698	551,153	1,743,698
Equipment rents—Net	1,107,197	1,067,177	1,107,197	1,067,177
Joint facility rents—Net Dr.	168,420	89,463	168,420	89,463
Net Railway operating income	1,544,281	1,855,052	Def. 988,869	Def. 2,500,174
Net income	Def. 2,674,217	Def. 2,404,136	Def. 5,207,367	Def. 6,759,362

* Restated to exclude from Account 101, "Freight," *only*, the effect of rate increases granted by I.C.C. on interstate traffic under Ex Parte 162 and 166, effective in 1947 and 1948, and also the effect of increases granted by the several State Commissions on intrastate traffic effective during the same years.

The F. E. C. Railway not subject to income taxes years 1947 and 1948.

[fol. 890]

Schedule No. 18

Atlantic Coast Line Railroad Company
Seaboard Air Line Railroad Company
Florida East Coast Railway Company
(Scott M. Loftin and John W. Martin, Trustees)

Statement Showing Effect on a System Basis on Net Railway Operating Income and Net Income, of Eliminating All Increases in Freight Rates Granted by the Interstate Commerce Commission and the Several State Commissions—Years 1947 and 1948

	Calendar Year		Calendar Year	
	1947	1948	1947	1948
	(Per Books of Account)		(Restated)	
Operating Revenues:				
Freight	$207,272,552	$232,212,859	$173,793,582	$165,473,005
Passenger	45,197,956	43,281,659	45,197,956	43,281,659
Mail	5,675,993	6,323,722	5,675,993	6,323,722
Express	5,953,889	5,348,836	5,953,889	5,348,836
All other	10,524,822	10,518,222	10,524,822	10,518,222
Total	274,625,212	297,685,298	241,146,242	230,945,444
Operating Expenses	232,912,173	246,509,450	232,912,173	246,509,450
Operating ratio	84.81	82.81	96.59	106.74
Railway tax accruals	20,989,197	24,570,851	17,765,135	15,753,840
Equipment rents—Net Debit	6,770,668	6,263,872	6,770,668	6,263,872
Joint facility rents—Net Debit	569,481	171,477	569,481	171,477
Net railway operating income	13,383,693	20,169,648	16,871,215 D	37,753,195 D
Net income	9,361,652	15,246,431	20,893,256 D	42,676,412 D

D—Denotes Deficit.

[fol. 891]

Schedule No. 19

Louisville and Nashville Railroad Company

Statement Showing Effect on a System Basis on Net Railway Operating Income and Net Income, of Eliminating All Increases in Freight Rates Granted by the Interstate Commerce Commission and the Several State Commissions—Years 1947 and 1948

	Calendar Year		Calendar Year	
	1947	1948	1947	1948
	(Per Books of Account)		(Restated)*	
Operating Revenues:				
Freight	$162,111,513	$179,600,760	$142,962,450	$137,980,753
Passenger	15,560,546	15,670,286	15,560,546	15,670,286
Mail	3,568,538	4,122,718	3,568,538	4,122,718
Express	3,147,270	2,860,059	3,147,270	2,860,059
All Other	5,309,301	5,017,860	5,309,301	5,017,860
Total	189,697,168	207,271,683	170,548,105	165,651,676
Operating expenses	156,337,231	169,453,493	156,337,231	169,453,493
Operating ratio	82.41	81.75	91.67	102.30
Railway tax accruals	24,109,728	25,366,064	16,833,084	14,140,400
Equipment rents—Net Credit	8,194,051	9,817,586	8,194,051	9,817,586
Joint facility rents—Net Debit	1,163,603	1,094,076	1,163,603	1,094,076
Net railway operating income	16,280,657	21,175,636	4,408,238	9,218,707 D
Net income	13,286,947	18,497,903	1,414,528	11,896,440 D

D—Denotes Deficit.

* Restated to exclude from Account, "Freight," *only*, the effect of rate increases granted by I.C.C. on interstate traffic under Ex Parte 162 and 166, effective in 1947 and 1948, and also the effect of increases granted by the several State Commissions on intrastate traffic effective during the same years. Railway tax accruals have been decreased to recognize lower Federal income taxes under the assumed circumstances.

[fol. 892]

Schedule No. 20

Georgia Southern and Florida Railway Company

Statement Showing Effect on a System Basis on Net Railway Operating Income and Net Income, of Eliminating All Increases in Freight Rates Granted by the Interstate Commerce Commission and the Several State Commissions—Years 1947 and 1948

Line No.		Calendar Year		Calendar Year	
		1947	1948	1947	1948
		(Per Books of Account)		(Restated)*	
	Railway Operating Revenues:				
1.	Freight	$4,566,999	$5,798,527	$4,193,014	$4,420,744
2.	Passenger	1,070,225	753,224	1,070,225	753,224
3.	Mail	302,596	347,388	302,596	347,388
4.	Express	82,119	81,380	82,119	81,380
5.	All Other	179,519	230,498	179,519	230,498
6.	Total	6,201,458	7,211,017	5,827,473	5,833,234
7.	Railway Operating Expenses	4,807,574	5,325,305	4,807,574	5,325,305
8.	Operating Ratio	77.52	73.85	82.50	91.29
9.	Railway Tax Accruals	536,064	518,509	389,064	343,509
10.	Equipment Rents—Net Debit	523,320	863,835	523,320	863,835
11.	Joint Facility Rents—Net Credit	17,581	12,676	17,581	12,676
12.	Net Railway Operating Income	352,081	516,044	125,096	D 686,739
13.	Net Income	45,070	210,733	D 181,915	D 992,050

D—Denotes deficit.

* Restated to exclude from Account 101, "Freight," *only*, the effect of rate increases granted by I.C.C. on interstate traffic under Ex Parte 162 and 166, effective in 1947 and 1948, and also the effect of increases granted by the several State Commissions on intrastate traffic effective during the same years. Railway tax accruals for federal and state income have been decreased by 38 per cent of the reduction in Account 101 to recognize lower Federal income taxes under the assumed circumstances.

Source: Reports to Interstate Commerce Commission and Company records.

[fol. 893]

Schedule No. 21

St. Louis-San Francisco Railway Company

Statement Showing Effect on a System Basis on Net Railway Operating Income and Net Income of Eliminating All Increases in Freight Rates Granted by the I.C.C. and the Several State Commissions During 1947 and 1948

	Calendar Year		Calendar Year	
	1947	1948	1947	1948
	(Per Books of Account)		(Restated)*	
Operating Revenues:				
Freight	$ 88,689,058	$ 96,619,579	$ 74,689,058	$ 69,012,979
Passenger	7,285,281	7,429,026	7,285,281	7,429,026
Mail	2,175,573	2,526,679	2,175,573	2,526,679
Express	1,811,462	1,725,167	1,811,462	1,725,167
All Other	4,196,478	4,405,556	4,196,478	4,405,556
Total	$104,157,852	$112,706,007	$ 90,157,852	$ 85,099,407
Operating Expenses	82,343,845	90,431,056	82,343,845	90,431,056
Operating Ratio	79.06	80.24	91.33	105.30
Railway Tax Accruals	11,658,470	11,949,878	7,710,805	7,102,000
Equipment Rents—Net	298,437	1,120,915	298,437	1,120,915
Joint Facility Rents—Net	80,675*	56,466*	80,675*	56,466*
Net Railway Operating Income	10,373,299	11,389,522	320,964	11,369,200*
Net Income	5,142,276	6,804,609	4,910,059*	15,954,113*

* Restated to exclude from Account 101, "Freight," only, the effect of rate increases granted by I.C.C. on interstate traffic under Ex Parte 162 and 166, effective in 1947 and 1948, and also the effect of increases granted by the several State Commissions on Intrastate effective during the same years. Railway Tax Accruals have been reduced by the amount of income taxes since there would be no taxable income under the assumed circumstances.

* Denotes Deficit.

[fol. 894]

Schedule No. 22

Atlantic Coast Line Railroad Company

Statement Showing Separation of Florida Freight Revenue Between That Derived from Interstate and That Derived from Intrastate Business Years 1936 to 1948 Inclusive

	Freight Revenue Acct. 101			Percentage	
Year	Interstate	Intrastate	Total	Interstate	Intrastate
1936	5,217,798	2,723,378	7,941,176	65.71	34.29
1937	5,752,376	2,392,257	8,144,633	70.63	29.37
1938	5,511,076	2,339,017	7,850,093	70.20	29.80
1939	6,420,929	2,510,981	8,931,910	71.89	28.11
1940	6,048,228	3,248,544	9,296,772	65.06	34.94
Average Year 1936–1940	5,790,081	2,642,835	8,432,916	68.66	31.34
1941	7,473,296	4,043,206	11,516,502	64.89	35.11
1942	11,777,010	6,080,478	17,857,488	65.95	34.05
1943	15,909,981	8,043,940	23,953,921	66.42	33.58
1944	15,600,163	5,728,930	21,329,093	73.14	26.86
1945	13,718,674	5,014,507	18,733,181	73.23	26.77
Average Year 1941–45	12,895,825	5,782,212	18,678,037	69.04	30.96
1946	13,953,721	6,051,620	20,005,341	69.75	30.25
1947	15,688,400	6,417,162	22,105,562	70.97	29.03
1948	17,538,280	6,851,134	24,389,414	71.91	28.09

[fol. 895]

Schedule No. 23

Seaboard Air Line Railroad Company

Statement Showing Separation of Florida Freight Revenue Between Interstate and Intrastate 1936–1948 Inclusive

	Freight Revenue (Acct. 101)			Percent	
Year	Interstate	Intrastate	Total	Interstate	Intrastate
1936	$5,512,691	$2,236,594	$7,749,285	71.14	28.86
1937	6,322,129	2,298,776	8,620,905	73.33	26.67
1938	6,291,423	2,525,883	8,817,306	71.35	28.65
1939	6,779,714	2,807,372	9,587,086	70.72	29.28
1940	6,801,696	3,427,990	10,229,686	66.49	33.51
Average Year 1936–1940	6,341,531	2,659,323	9,000,854	70.45	29.55
1941	8,629,787	4,261,205	12,890,992	66.94	33.06
1942	14,629,943	6,275,632	20,905,575	69.98	30.02
1943	19,962,737	6,819,365	26,782,102	74.54	25.46
1944	19,165,100	4,980,478	24,145,578	79.37	20.63
1945	17,244,350	4,564,889	21,809,239	79.07	20.93
Average Year 1941–1945	15,926,383	5,380,314	21,306,697	74.75	25.25
1946	18,820,695	5,621,880	24,442,575	77.00	23.00
1947	21,412,539	6,471,763	27,884,302	76.79	23.21
1948	24,517,990	7,463,559	31,981,549	76.66	23.34

Source: Annual Reports to Florida Railroad Commission.

[fol. 896]

Schedule No. 24

Florida East Coast Railway Company
(Scott M. Loftin and John W. Martin, Trustee)

Statement Showing Separation of Florida Freight Revenue Between Interstate and Intrastate 1936–1948, Inclusive

	Freight Revenue (Acct. 101)			Percent	
Year	Interstate	Intrastate	Total	Interstate	Intrastate
1936	$4,129,042	$1,305,428	$5,434,470	75.98	24.02
1937	4,327,149	1,231,295	5,558,444	77.85	22.15
1938	4,879,627	1,236,274	6,115,901	79.79	20.21
1939	4,508,708	1,324,910	5,833,618	77.29	22.71
1940	4,965,126	1,478,204	6,443,330	77.06	22.94
Average Year 1936–1940	4,561,930	1,315,222	5,877,152	77.62	22.38
1941	5,082,019	1,403,794	6,485,813	78.36	21.64
1942	10,139,245	1,896,473	12,035,718	84.25	15.75
1943	13,716,812	3,340,523	17,057,335	80.42	19.58
1944	13,041,360	2,908,825	15,950,185	81.76	18.24
1945	11,822,361	2,457,143	14,279,504	82.79	17.21
Average Year 1941–1945	10,760,359	2,401,352	13,161,711	81.76	18.24
1946	13,236,225	2,924,858	16,161,083	81.90	18.10
1947	13,836,213	3,061,403	16,897,616	81.88	18.12
1948	15,698,843	3,117,612	18,816,455	83.43	16.57

[fol. 897]

Schedule No. 25

Atlantic Coast Line Railroad Company
Seaboard Air Line Railroad Company
Florida East Coast Railway Company
(Scott M. Loftin and John W. Martin, Trustee)

Statement Showing Separation of Florida Freight Revenue between that Derived from Interstate and that Derived from Intrastate Business, Years 1936 to 1948, Inclusive

	Freight Revenue (Acct. 101)			Percentage	
Year	Interstate	Intrastate	Total	Interstate	Intrastate
1936	$14,859,531	$6,265,400	$21,124,931	70.34	29.66
1937	16,401,654	5,922,328	22,323,982	73.47	26.53
1938	16,682,126	6,101,174	22,783,300	73.22	26.78
1939	17,709,351	6,643,263	24,352,614	72.72	27.28
1940	17,815,050	8,154,738	25,969,788	68.60	31.40
Average Year 1936–1940	16,693,542	6,617,381	23,310,923	71.61	28.39
1941	21,185,102	9,708,205	30,893,307	68.58	31.42
1942	36,546,198	14,252,583	50,798,781	71.94	28.06
1943	49,589,530	18,203,828	67,793,358	73.15	26.85
1944	47,806,623	13,618,233	61,424,856	77.83	22.17
1945	42,785,385	12,036,539	54,821,924	78.04	21.96
Average Year 1941–1945	39,582,568	13,563,878	53,146,446	74.48	25.52
1946	46,010,641	14,598,358	60,608,999	75.91	24.09
1947	50,937,152	15,950,328	66,887,480	76.15	23.85
1948	57,755,113	17,432,305	75,187,418	76.81	23.19

[fol. 898] Schedule No. 26

Louisville and Nashville Railroad Company

Statement Showing Separation of Florida Freight Revenue between that Derived from Interstate and that Derived from Intrastate Business

Year	Freight Revenue Acct. 101			Percentage	
	Interstate	Intrastate	Total	Interstate	Intrastate
1936	$ 651,984	$ 336,464	$ 988,448	65.96	34.04
1937	755,410	369,389	1,124,799	67.16	32.84
1938	674,860	287,468	962,328	70.13	29.87
1939	769,010	303,746	1,072,756	71.69	28.31
1940	808,972	317,493	1,126,465	71.82	28.18
Average Year 1936–1940	732,047	322,912	1,054,959	69.39	30.61
1941	1,045,068	386,194	1,431,262	73.02	26.98
1942	1,962,087	463,032	2,425,119	80.91	19.09
1943	2,007,812	309,405	2,317,217	86.65	13.35
1944	1,724,710	326,288	2,050,998	84.09	15.91
1945	1,577,346	401,206	1,978,552	79.72	20.28
Average Year 1941–1945	1,663,405	377,225	2,040,630	81.51	18.49
1946	1,601,914	457,472	2,059,386	77.79	22.21
1947	1,805,176	532,090	2,337,266	77.23	22.77
1948	1,802,687	668,128	2,470,815	72.96	27.04

[fol. 899] Schedule No. 27

Georgia Southern and Florida Railway Company

Statement Showing Separation of Florida Freight Revenue Between Interstate and Intrastate 1936–1948, Inclusive

Line No.	Year	Interstate	Intrastate	Total	Percent of Total Interstate	Percent of Total Intrastate
1	1936	$203,375	$10,012	$213,387	95.31	4.69
2	1937	208,594	13,541	222,135	93.90	6.10
3	1938	180,799	10,634	191,433	94.45	5.55
4	1939	221,136	10,751	231,887	95.36	4.64
5	1940	364,191	42,811	407,002	89.48	10.52
6	Average Year 1936–1940	235,619	17,548	253,167	93.07	6.93
7	1941	426,879	83,263	510,142	83.68	16.32
8	1942	516,263	111,615	627,878	82.22	17.78
9	1943	604,003	194,324	798,327	75.66	24.34
10	1944	593,395	34,049	627,444	94.57	5.43
11	1945	589,426	38,791	628,217	93.83	6.17
12	Average Year 1941–1945	545,993	92,408	638,401	85.53	14.47
13	1946	658,288	36,228	694,516	94.78	5.22
14	1947	759,415	35,813	795,228	95.50	4.50
15	1948	1,020,695	68,054	1,088,749	93.75	6.25

Source: Annual Reports to the Railroad and Public Utilities Commission of the State of Florida.

[fol. 900] Schedule No. 28

St. Louis-San Francisco Railway Company

Statement Showing Freight Revenue in State of Florida Separated Between Interstate and Intrastate Years 1936 to 1938

Year	Freight Revenue			Percent of Total	
	Interstate	Intrastate	Total	Interstate	Intrastate
1936	104,951	364	105,315	99.65	0.35
1937	89,125	380	89,505	99.58	0.42
1938	96,301	101	96,402	99.90	0.10
1939	130,237	36	130,273	99.97	0.03
1940	134,251	14	134,265	99.99	0.01
Average Year 1936-1940	110,973	179	111,152	99.84	0.16
1941	154,194	751	154,945	99.52	0.48
1942	225,835	1,938	227,773	99.15	0.85
1943	203,408	2,392	205,800	98.84	1.16
1944	274,510	2,494	277,004	99.10	0.90
1945	557,360	12,168	569,528	97.86	2.14
Average Year 1941-1945	283,061	3,949	287,010	98.62	1.38
1946	559,297	12,468	571,765	97.82	2.18
1947	785,316	3,456	788,772	99.56	0.44
1948	395,239	2,074	397,313	99.48	0.52

[fol. 901]

Schedule No. 29

Before the Interstate Commerce Commission
I.C.C. Docket No. 30140

Statement Showing Freight Traffic Density Statistics, State of Florida Compared with System and System Excluding Florida for the Seaboard Air Line Railroad and Atlantic Coast Line Railroad, Year 1938 to 1948, Inclusive

Year	System			State of Florida						System Excluding Florida					
	Average Miles Operated	Revenue Ton Miles (Thous)	Tons One Mile Per Mile of Road	Average Miles Operated	Revenue Ton Miles (Thous)	Tons One Mi. Per Mile of Road	Pct. of Fla. Opertd. Miles to Sys.	Pct. of Rev. Ton Mi. Fla. to Sys.	Pct. Fla. Tons 1 Mi. Per Mi. or Rd. to Sys.	Aver. Miles Operated	Revenue Ton Miles (Thous)	Tons One Mile Per Mi. of Road	Pct. of Fla. Op. Miles to Sys. Exc'l. Fla.	Pct. of Rev. Ton Miles Fla. to Sys. excl. Fla.	Pct. of Tons 1 Mi. Per Mi. of Rd. Fla. to Sys. Excl. Fla.
Seaboard Air Line Railroad Company															
1938	4,317.99	2,691,255	623,266	1,687.37	735,055	435,622	39.08	27.31	69.89	2,630.62	1,956,200	743,627	64.14	37.58	58.59
1939	4,316.88	2,992,298	693,162	1,687.37	781,874	463,368	39.09	26.13	66.85	2,629.51	2,210,424	840,622	64.17	35.37	55.12
1940	4,313.75	3,408,910	790,243	1,687.37	874,081	518,017	39.12	25.64	65.55	2,626.39	2,534,829	965,138	64.25	34.48	53.67
Av. 3 Yrs	4,316.21	3,030,821	702,196	1,687.37	797,003	472,336	39.09	26.30	67.27	2,628.84	2,233,818	849,735	64.19	35.68	55.59
1941	4,309.36	4,731,784	1,098,025	1,682.97	1,143,581	679,502	39.05	24.17	61.88	2,626.39	3,588,203	1,366,211	64.08	31.87	49.74
1942	4,258.79	7,356,822	1,727,397	1,636.54	1,869,281	1,142,215	38.43	25.41	66.12	2,622.25	5,487,341	2,092,608	62.41	34.07	54.58
1943	4,179.47	8,412,430	2,012,810	1,567.30	2,333,076	1,488,596	37.50	27.73	73.96	2,612,17	6,079,404	2,327,339	60.00	38.38	63.96
1944	4,174.51	8,449,296	2,024,021	1,564.57	2,026,454	1,295,215	37.48	23.98	63.99	2,609.94	6,422,842	2,460,916	59.95	31.55	52.63
1945	4,166.70	7,840,592	1,881,727	1,562.53	1,907,354	1,220,683	37.50	24.33	64.87	2,604.17	5,933,238	2,278,360	60.00	32.15	53.58
Av. 5 Yrs	4,217.77	7,358,155	1,744,560	1,602.58	1,855,949	1,158,101	38.00	25.22	66.38	2,614.98	5,502,206	2,104,110	61.28	33.73	55.04
1946	4,150.59	7,877,256	1,897,864	1,561.70	2,133,598	1,366,202	37.63	27.09	71.99	2,588.89	5,743,658	2,218,579	60.32	37.15	61.58
1947	4,156.03	8,067,131	1,941,067	1,567.14	2,368,068	1,511,076	37.71	29.35	77.85	2,588.89	5,699,063	2,201,354	60.53	41.55	68.64
Av. 2 Yrs	4,153.31	7,972,194	1,919,480	1,564.42	2,250,833	1,438,765	37.67	28.23	74.96	2,588.89	5,721,361	2,209,966	60.43	39.34	65.10
1948	4,152.43	8,205,360	1,976,038	1,563.54	2,431,098	1,554,868	37.65	29.63	78.68	2,588.89	5,774,262	2,230,401	60.39	42.10	69.71
Atlantic Coast Line Railroad Company															
1938	5,744.98	2,580,770	449,222	2,030.94	551,671	271,633	35.35	21.38	60.47	3,714.04	2,029,099	546,332	54.68	27.19	49.72
1939	5,744.65	2,950,519	513,612	2,032.19	640,216	315,037	35.38	21.70	61.34	3,712.46	2,310,303	622,311	54.74	27.71	50.62
1940	5,739.90	3,432,559	598,017	2,029.77	753,452	371,201	35.36	21.95	62.07	3,710.13	2,679,107	722,106	54.71	28.12	51.41
Av. 3 Yrs	5,743.18	2,987,949	520,260	2,030.96	648,445	319,278	35.36	21.70	61.37	3,712.21	2,339,503	630,218	54.71	27.72	50.66
1941	5,719.52	4,804,269	839,978	2,022.98	975,190	482,656	35.37	20.30	57.39	3,696.54	3,829,079	1,035,855	54.73	25.47	46.54
1942	5,643.75	7,886,390	1,397,367	1,979.26	1,588,890	802,770	35.07	20.15	57.45	3,664.49	6,297,500	1,718,320	54.01	25.23	46.71
1943	5,605.12	10,076,711	1,797,769	1,950.63	2,260,338	1,158,773	34.80	22.43	64.46	3,654.49	7,816,373	2,138,841	53.38	28.92	54.18
1944	5,598.95	9,796,547	1,749,711	1,942.01	2,015,060	1,037,616	34.69	20.57	59.30	3,656.94	7,781,487	2,127,868	53.10	25.90	48.76
1945	5,573.46	8,922,184	1,600,834	1,926.10	1,869,994	970,871	34.56	20.96	60.65	3,647.36	7,052,190	1,933,505	52.81	26.52	50.21
Av. 5 Yrs	5,628.16	8,297,220	1,474,233	1,964.20	1,741,894	886,821	34.90	20.99	60.15	3,663.96	6,555,326	1,789,137	53.61	26.57	49.57
1946	5,570.01	8,088,252	1,452,107	1,924.05	1,968,210	1,022,952	34.54	24.33	70.45	3,645.96	6,120,042	1,678,582	52.77	32.16	60.94
1947	5,573.00	7,868,971	1,411,981	1,925.03	2,002,473	1,040,230	34.54	25.45	73.67	3,647.97	5,866,498	1,608,154	52.77	34.13	64.68
Av. 2 Yrs	5,571.50	7,978,611	1,432,040	1,924.54	1,985,341	1,031,592	34.54	24.88	72.04	3,646.96	5,993,270	1,643,360	52.77	33.13	62.77
1948	5,569.87	7,672,218	1,377,450	1,923.81	1,912,447	994,093	34.54	24.93	72.17	3,646.96	5,759,771	1,579,725	52.76	33.20	62.93

Source: Annual Reports to Railroad and Public Utilities Commission—State of Florida.

[fol. 905] Schedule No. 33

Atlantic Coast Line Railroad Company
(Includes Atlanta, Birmingham & Coast)

Statement Showing Contribution of Intrastate Freight Revenues to Total System Freight Revenues and Florida Percentage of Total Intrastate Freight Revenues, Years 1936–1948, Inclusive

Year	Total System Freight Revenues	Total Intrastate Freight Revenues	Percent of Total	Florida Intrastate Freight Revenues	Percent Florida Intrastate to Total Intrastate
1936	$ 34,488,967	$ 6,517,441	18.9	$2,723,378	42.8
1937	37,966,878	6,783,448	17.9	2,392,257	35.3
1938	35,268,145	6,323,347	17.9	2,339,017	37.0
1939	38,580,646	6,136,071	15.9	2,510,981	40.9
1940	40,053,089	6,988,484	17.4	3,248,544	46.5
1941	53,897,418	9,611,729	17.8	4,043,206	42.1
1942	87,620,345	12,672,748	14.5	6,080,478	48.0
1943	108,803,168	14,135,471	13.0	8,043,940	56.9
1944	107,474,625	11,116,923	10.3	5,728,930	51.5
1945	95,319,547	10,134,026	10.6	5,014,507	49.5
1946	88,972,192	12,107,193	13.6	6,051,620	50.0
1947	95,987,384	13,124,963	13.7	6,417,163	48.9
1948	106,370,606	14,254,789	13.4	6,851,135	48.1

[fol. 906] Schedule No. 34

Seaboard Air Line Railroad Company

Statement Showing Contribution of Intrastate Freight Revenues to Total System Freight Revenues and Florida Percentage of Total Intrastate Freight Revenues, Years 1936–1948, Inclusive

Year	Total System Freight Revenues	Total Intrastate Freight Revenues	Percent of Total	Florida Intrastate Freight Revenues	Percent Florida Intrastate to Total Intrastate
1936	$ 29,927,284	$ 4,778,821	16.0	$2,236,594	46.8
1937	33,030,230	5,038,096	15.3	2,298,776	45.6
1938	31,004,975	4,900,606	15.8	2,525,883	51.5
1939	33,665,636	5,144,571	15.3	2,807,372	54.6
1940	36,492,487	5,913,673	16.2	3,427,990	58.0
1941	48,476,540	7,297,534	15.1	4,261,205	58.4
1942	76,350,934	9,783,803	12.8	6,275,632	64.1
1943	88,381,325	9,984,200	11.3	6,819,365	68.3
1944	88,907,329	7,737,078	8.7	4,980,478	64.4
1945	82,701,067	7,612,560	9.2	4,564,889	60.0
1946	83,676,915	9,732,105	11.6	5,621,880	57.8
1947	94,387,552	11,149,990	11.8	6,471,763	58.0
1948	107,025,798	12,376,933	11.6	7,463,559	60.3

Source: Reports to the Railroad & Public Utilities Commission of the State of Florida and Records of the Company.

[fol. 907] Schedule No. 35

Atlantic Coast Line Railroad Company
Seaboard Air Line Railroad Company

Statement Showing Contribution of Intrastate Freight Revenues to Total System Freight Revenues and Florida Percentage of Total Intrastate Freight Revenues, Years 1936–1948, Inclusive

Year	Total System Freight Revenues	Total Intrastate Freight Revenues	Percent of Total	Florida Intrastate Freight Revenues	Percent Florida Intrastate to Total Intrastate
1936	$ 64,416,251	$11,296,262	17.5	$4,959,972	43.9
1937	70,997,108	11,821,544	16.7	4,691,033	39.7
1938	66,273,120	11,223,953	16.9	4,864,900	43.3
1939	72,246,282	11,280,642	15.6	5,318,353	47.1
1940	76,545,576	12,902,157	16.9	6,676,534	51.7
1941	102,373,958	16,909,263	16.5	8,304,411	49.1
1942	163,971,279	22,456,551	13.7	12,356,110	55.0
1943	197,184,493	24,119,680	12.2	14,863,305	61.6
1944	196,381,954	18,854,001	9.6	10,709,408	56.8
1945	178,020,614	17,746,586	10.0	9,579,396	54.0
1946	172,649,107	21,839,298	12.6	11,673,500	53.5
1947	190,374,936	24,274,953	12.8	12,888,926	53.1
1948	213,396,404	26,631,722	12.5	14,314,694	53.8

[fol. 908] Schedule No. 36

Atlantic Coast Line Railroad Company
(Includes Atlanta, Birmingham & Coast)

Average Number of Employees and Average Annual Compensation per Employee

					Index 1936 = 100	
Year	Average Number of Employees	Ave. Straight Time Hourly Rate (Cents)	Total Compensation	Average Annual Compensation per Employee	Straight Time Hourly Rate	Annual Compensation per Employee
1936	15,526	56.48	$23,322,108	$1,502	100	100
1937	16,431	58.04	25,507,547	1,552	103	103
1938	14,987	60.61	24,342,506	1,624	107	108
1939	15,032	62.66	25,362,134	1,687	111	112
1940	15,302	65.54	27,058,777	1,768	116	118
1941	16,638	69.30	31,773,466	1,910	123	127
1942	19,039	76.42	41,236,191	2,166	135	144
1943	21,209	76.40	47,009,200	2,216	135	148
1944	22,580	84.97	55,158,703	2,443	150	163
1945	24,111	84.62	59,577,815	2,471	150	165
1946	23,849	102.14	69,341,684	2,908	181	194
1947	22,721	108.77	69,595,505	3,063	193	204
1948	20,893	122.72	72,319,882	3,461	217	230

[fol. 909]

Schedule No. 37

Seaboard Air Line Railroad Company
(See Note)

Average Number of Employees and Average Annual Compensation per Employee

Year	Average Number of Employees	Ave. Straight Time Hourly Rate (Cents)	Total Compensation	Average Annual Compensation per Employee	Index 1936 = 100 Straight Time Hourly Rate	Index 1936 = 100 Annual Compensation per Employee
1936	13,029	58.43	$20,150,007	$1,547	100	100
1937	13,846	60.45	22,099,733	1,596	103	103
1938	13,007	63.46	21,935,003	1,686	109	109
1939	13,468	63.81	23,046,361	1,711	109	111
1940	13,865	64.90	24,566,208	1,772	111	115
1941	15,557	69.60	30,434,154	1,956	119	126
1942	18,125	76.48	41,205,237	2,273	131	147
1943	20,120	77.03	46,733,988	2,323	132	150
1944	20,252	86.91	52,544,127	2,595	149	168
1945	19,625	87.90	51,135,578	2,606	150	168
1946	19,270	105.76	58,787,653	3,051	181	197
1947	19,133	111.98	60,454,394	3,160	192	204
1948	18,591	124.95	65,191,498	3,507	214	227

Note: Seaboard Air Line Railroad Company commenced operation August 1, 1946. This statement includes results of Seaboard Air Line Railway Company and its Receivers referable to years 1936 to 1945 and seven months of 1946 and for the New Company for period August 1, 1946 to December 31, 1948.

[fol. 910]

Schedule No. 38

Atlantic Coast Line Railroad Company
Seaboard Air Line Railroad Company

Average Number of Employees and Average Annual Compensation per Employee

Year	Average Number of Employees	Average Straight Time Hourly Rate (Cents)	Total Compensation	Average Annual Compensation per Employee	Index 1936 = 100 Straight Time Hourly Rate	Index 1936 = 100 Annual Compensation per Employee
1936	28,555	57.36	$43,472,115	$1,522	100	100
1937	30,277	59.13	47,607,280	1,572	103	103
1938	27,994	61.92	46,277,509	1,653	108	109
1939	28,500	63.20	48,408,495	1,699	110	112
1940	29,167	65.24	51,624,985	1,770	114	116
1941	32,195	69.45	62,207,620	1,932	121	127
1942	37,164	76.45	82,441,428	2,218	133	146
1943	41,329	76.71	93,743,188	2,268	134	149
1944	42,832	85.88	107,702,830	2,515	150	165
1945	43,736	86.10	110,713,393	2,534	150	166
1946	43,119	103.77	128,129,334	2,972	181	195
1947	41,854	110.24	130,049,899	3,107	192	204
1948	39,484	123.77	137,511,380	3,483	216	229

[fol. 911] Schedule No. 39

Atlantic Coast Line Railroad Company
(Includes Atlanta, Birmingham & Coast)

Payroll Taxes

Year	Average Number Employees	Total Payroll Taxes	Index 1937 = 100	Average Payroll Taxes per Employee	Index 1937 = 100
1937	16,431	$1,205,922	100	$ 73.39	100
1938	14,987	1,392,837	115	92.94	127
1939	15,032	1,443,751	120	96.05	131
1940	15,302	1,592,684	132	104.08	142
1941	16,638	1,876,399	156	112.78	154
1942	19,039	2,412,066	200	126.69	173
1943	21,209	3,043,871	252	143.52	196
1944	22,580	3,299,930	274	146.14	199
1945	24,111	3,573,080	296	148.19	202
1946	23,849	4,222,834	350	177.07	241
1947	22,721	5,669,285	470	249.52	340
1948	20,893	4,072,942	338	194.94	266

[fol. 912] Schedule No. 40

Seaboard Air Line Railroad Company
(See Note)

Payroll Taxes

Year	Average Number Employees	Total Payroll Taxes	Index 1937 = 100	Average Payroll Taxes per Employee	Index 1937 = 100
1937	13,846	$1,038,909	100	$ 74.67	100
1938	13,007	1,243,032	120	95.57	128
1939	13,468	1,302,087	125	96.68	129
1940	13,865	1,460,623	141	105.35	141
1941	15,557	1,785,692	172	114.78	154
1942	18,125	2,362,037	227	130.32	175
1943	20,120	2,982,006	287	148.21	198
1944	20,252	3,090,026	297	152.58	204
1945	19,625	3,027,685	291	154.28	206
1946	19,270	3,497,113	337	181.48	243
1947	19,133	4,824,746	464	252.17	338
1948	18,591	3,611,610	348	194.27	260

Note: Seaboard Air Line Railroad Company commenced operation August 1, 1946. This statement includes results of Seaboard Air Line Railway Company and its Receivers referable to years 1937 to 1945 and seven months of 1946 and for the New Company for period August 1, 1946 to December 31, 1948.

[fol. 913] Schedule No. 41

Atlantic Coast Line Railroad Company
Seaboard Air Line Railroad Company

Payroll Taxes

Year	Average Number of Employees	Total Payroll Taxes	Index 1937 = 100	Average Payroll Taxes per Employee	Index 1937 = 100
1937	30,277	$ 2,244,831	100	$ 74.14	100
1938	27,994	2,635,869	117	94.16	127
1939	28,500	2,745,838	122	96.35	130
1940	29,167	3,053,307	136	104.68	141
1941	32,195	3,662,091	163	113.75	153
1942	37,164	4,774,103	213	128.46	173
1943	41,329	6,025,877	268	145.80	197
1944	42,832	6,389,956	285	149.19	201
1945	43,736	6,600,765	294	150.92	204
1946	43,119	7,719,947	344	179.04	241
1947	41,854	10,494,031	467	250.73	338
1948	39,484	7,684,552	342	194.62	263

[fol. 902]

Schedule No. 30

Atlantic Coast Line Railroad Company
(Includes Atlanta, Birmingham & Coast)

Operating Revenues, Expenses and Net Railway Operating Income for Freight and Passenger Services—Years 1936 to 1948, inclusive.

Year	Revenues	Expenses	Net Revenues	Net Rwy. Oper. Income	Ratio Exps. to Revenues	Revenues	Expenses	Net Revenues	Net Rwy. Oper. Income	Ratio Exps. to Revenues
	Freight Service					Passenger Service				
1936	$ 35,843,847	$24,605,133	$11,238,714	$ 7,380,682	69	$11,166,316	$12,210,414	$ 1,044,098-D	$2,984,949-D	109
1937	39,432,842	27,180,307	12,252,535	7,601,217	69	12,192,786	12,958,244	765,458-D	2,775,018-D	106
1938	36,602,169	25,939,309	10,662,860	5,993,713	71	10,928,798	12,590,115	1,661,317-D	3,795,231-D	115
1939	39,971,204	26,784,600	13,186,604	8,158,469	67	10,573,824	12,912,203	2,338,379-D	4,502,108-D	122
1940	41,464,632	28,404,816	13,059,816	7,949,478	69	12,078,713	14,312,302	2,233,589-D	4,418,203-D	118
Average Year 1936-1940	38,662,939	26,582,833	12,080,106	7,416,712	69	11,388,087	12,996,656	1,608,569-D	3,695,102-D	114
1941	55,474,638	34,379,310	21,095,328	12,803,917	62	16,592,112	16,136,345	455,767	1,509,173-D	97
1942	88,945,734	46,819,307	42,126,427	17,400,387	53	32,198,175	20,876,094	11,322,081	4,100,791	65
1943	110,322,267	58,808,524	51,513,743	11,419,511	53	50,490,044	28,286,109	22,203,935	4,800,328	56
1944	109,361,740	68,992,851	40,368,889	8,889,779	63	54,457,789	31,152,691	23,305,098	5,150,741	57
1945	96,829,530	92,834,186	3,995,344	1,328,080	96	49,831,802	37,440,389	12,391,413	4,164,919	75
Average Year 1941-1945	92,186,782	60,366,836	31,819,946	10,368,335	65	40,713,984	26,778,326	13,935,658	3,341,521	66
1946	90,597,835	79,783,728	10,814,107	4,903,883	88	35,507,327	33,944,295	1,563,032	113,071	96
1947	98,302,700	78,009,183	20,293,517	10,711,776	79	30,127,223	34,452,608	4,325,385-D	7,662,134-D	114
1948	108,560,523	83,035,669	25,524,854	14,789,515	76	27,776,167	35,251,845	7,475,678-D	9,662,761-D	127

D—Denotes Deficit.
Source: Annual Reports to Interstate Commerce Commission.

[fol. 903]

Schedule No. 31

Seaboard Air Line Railroad Company

Operating Revenues, Expenses and Net Railway Operating Income for Freight and Passenger Services—Years 1936 to 1948, inclusive.

Year	Revenues	Expenses	Net Revenues	Net Rwy. Oper. Income	Ratio Exps. to Revenues	Revenues	Expenses	Net Revenues	Net Rwy. Oper. Income	Ratio Exps. to Revenues
	Freight Service					Passenger Service				
1936	$ 30,907,990	$21,580,718	$ 9,327,272	$ 6,874,235	70	$ 7,438,065	$10,239,891	$ 2,801,826–D	$ 3,953,652–D	138
1937	34,148,783	23,978,398	10,170,385	7,556,786	70	8,642,095	10,759,112	2,117,017–D	3,207,798–D	124
1938	32,115,547	23,611,628	8,503,919	5,533,001	74	7,894,197	10,571,899	2,677,702–D	4,083,514–D	134
1939	34,630,738	25,183,628	9,447,110	6,591,466	73	9,532,682	11,309,540	1,776,858–D	2,997,095–D	119
1940	37,537,744	26,900,605	10,637,139	7,211,763	72	10,953,222	12,370,159	1,416,937–D	2,807,430–D	113
Average Year 1936–1940	33,868,160	24,250,995	9,617,165	6,753,450	72	8,892,052	11,050,120	2,158,068–D	3,409,898–D	124
1941	49,684,894	34,250,043	15,434,851	11,140,898	69	14,924,009	14,550,679	373,330	1,033,934–D	97
1942	77,366,407	47,243,467	30,122,940	23,291,337	61	32,875,968	19,766,891	13,109,077	10,654,634	60
1943	89,466,395	55,264,091	34,202,304	16,616,784	62	47,791,408	25,559,619	22,231,789	12,087,222	53
1944	90,075,252	60,171,251	29,904,001	11,903,948	67	51,113,725	28,768,192	22,345,533	10,396,447	56
1945	84,094,677	77,790,293	6,304,384	405,489–D	92	46,115,821	33,513,485	12,602,336	11,531,022	73
Average Year 1941–1945	78,137,525	54,943,829	23,193,696	12,509,496	70	38,564,186	24,431,773	14,132,413	8,727,078	63
1946	85,246,534	65,331,346	19,915,188	14,384,259	77	27,456,859	27,376,163	219,304–D	335,496–D	101
1947	96,430,560	69,330,320	27,100,240	16,192,037	72	22,710,395	27,436,778	4,726,383–D	7,402,266–D	121
1948	109,287,474	74,420,650	34,866,824	21,858,295	68	23,407,935	29,903,477	6,495,542–D	8,670,453–D	128

Note: Seaboard Air Line Railroad Company commenced operation August 1, 1946. This statement includes results of Seaboard Air Line Railway Company and its Receivers referable to years 1936 to 1945 and seven months of 1946 and for the New Company for period August 1, 1946 to December 31, 1948, inclusive.

D—Denotes deficit.

[fol. 904]

Schedule No. 32

Atlantic Coast Line Railroad Company
Seaboard Air Line Railroad Company

Operating Revenues, Expenses and Net Railway Operating Income for Freight and Passenger Services—Years 1936 to 1948, inclusive.

Year	Revenues	Expenses	Net Revenues	Net Rwy. Oper. Income	Ratio Exps. to Revenues	Revenues	Expenses	Net Revenues	Net Rwy. Oper. Income	Ratio Exps. to Revenues
	Freight Service					Passenger Service				
1936	$ 66,751,837	$ 46,185,851	$20,565,986	$14,254,917	69	$ 18,604,381	$ 22,450,305	$ 3,845,924-D	$ 6,938,601-D	121
1937	73,581,625	51,158,705	22,422,920	15,158,003	70	20,834,881	23,717,356	2,882,475-D	5,982,816-D	114
1938	68,717,716	49,550,937	19,166,779	11,526,714	72	18,822,995	23,162,014	4,339,019-D	7,878,745-D	123
1939	74,601,942	51,968,228	22,633,714	14,749,935	70	20,106,506	24,221,743	4,115,237-D	7,499,203-D	120
1940	79,002,376	55,305,421	23,696,955	15,161,241	70	23,031,935	26,682,461	3,650,526-D	7,225,633-D	116
Average Year 1936-1940	72,531,099	50,833,828	21,697,271	14,170,162	70	20,280,140	24,046,776	3,766,636-D	7,105,000-D	119
1941	105,159,532	68,629,353	36,530,179	23,944,815	65	31,516,121	30,687,024	829,097	2,543,107-D	97
1942	163,312,141	94,062,774	72,249,367	40,691,724	57	65,074,143	40,642,985	24,431,158	14,755,425	62
1943	199,783,662	114,072,615	85,716,047	28,036,295	57	98,281,452	53,845,728	44,435,724	16,887,550	55
1944	199,436,992	129,164,102	70,272,890	20,793,727	65	105,571,514	59,920,883	45,650,631	15,547,188	57
1945	180,924,207	170,624,479	10,299,728	922,591	94	95,947,623	70,953,874	24,993,749	15,695,941	74
Average Year 1941-1945	170,324,307	115,310,665	55,013,642	22,877,830	68	79,278,171	51,210,099	28,068,072	12,068,599	65
1946	175,844,369	145,115,074	30,729,295	19,288,142	83	62,664,186	61,320,458	1,343,728	222,425-D	98
1947	194,733,260	147,339,503	47,393,757	26,903,813	76	52,837,618	61,889,386	9,051,768-D	15,064,400-D	117
1948	217,847,997	157,456,319	60,391,678	36,647,810	72	51,184,102	65,155,322	13,971,220-D	18,333,214-D	127

Source: Consolidation of individual statements for the two Railroads.

[fol. 914]

Schedule No. 42

Atlantic Coast Line Railroad Company

Condensed Income Account
Four Months 1949 Compared with Four Months 1948

	January 1 to April 30		Increase Decrease-D	Percent
	1949	1948		
Operating Revenues				
Freight	$36,602,974	$38,010,215	$1,407,241-D	3.7-D
Passenger	8,182,295	8,351,713	169,418-D	2.0-D
Mail	1,017,058	947,554	69,504	7.3
Express	781,950	1,230,833	448,883-D	36.5-D
All Other	1,604,083	1,753,089	149,006-D	8.5-D
Total Railway Operating Revenues	48,188,360	50,293,404	2,105,044-D	4.2-D
Operating Expenses				
Maint. of Way & Structures	6,574,783	8,213,519	1,638,736-D	20.0-D
Maint. of Equipment	8,303,183	7,283,488	1,019,695	14.0
Traffic	1,253,002	1,210,445	42,557	3.5
Transportation	19,403,708	20,401,538	997,830-D	4.9-D
Miscellaneous Operations	870,742	908,042	37,300-D	4.1-D
General	1,377,546	1,230,159	147,387	12.0
Total Operating Expenses	37,782,964	39,247,191	1,464,227-D	3.7-D
Net Revenue from Ry. Operations	10,405,396	11,046,213	640,817-D	5.8-D
Taxes				
Payroll	1,254,606	1,863,692	609,086-D	32.7-D
Federal Income	2,200,000	1,800,000	400,000	22.2
All Other	1,545,394	1,336,308	209,086	15.6
Total Taxes	5,000,000	5,000,000	.....	.....
Ry. Operating Income	5,405,396	6,046,213	640,817-D	10.6-D
Equipment Rents—Net Dr.	1,088,810	1,420,255	331,445-D	23.3-D
Joint Facility Rents—Net Cr.	41,901	19,563	22,338	114.2
Net Ry. Operating Income	4,358,487	4,645,521	287,034-D	6.2-D
Net Income	5,162,414	5,788,230	625,816-D	10.8-D
Ratios				
Operating Ratio	78.41	78.04	.37	
Tax Ratio	10.38	9.94	.44	
Total Operating & Tax Ratio	88.79	87.98	.81	

[fol. 915]

Schedule No. 43

Seaboard Air Line Railroad Company

Condensed Income Account
Four Months 1949 Compared with Four Months 1948

	January 1 to April 30		Increase Decrease-D	Percent
	1949	1948		
Operating Revenues				
Freight	$36,841,633	$36,922,815	$ 81,182-D	.2-D
Passenger	6,580,873	6,578,023	2,850	....
Mail	989,333	831,183	158,150	19.0
Express	527,247	835,592	308,345-D	36.9-D
All Other	1,691,335	1,834,671	143,336-D	7.8-D
Total Railway Operating Revenues	46,630,421	47,002,284	371,863-D	.8-D
Operating Expenses				
Maint. of Way & Structures	7,628,478	7,106,259	522,219	7.3
Maint. of Equipment	8,219,280	7,765,320	453,960	5.8
Traffic	1,315,040	1,215,142	99,898	8.2
Transportation	17,747,463	18,112,800	365,337-D	2.0-D
Miscellaneous Operations	1,044,094	1,115,708	71,614-D	6.4-D
General	1,213,065	1,161,112	51,953	4.5
Total Operating Expenses	37,167,420	36,476,341	691,079	1.9
Net Revenue from Ry. Operations	9,463,001	10,525,943	1,062,942-D	10.1-D
Taxes				
Payroll	1,259,538	1,710,046	450,508-D	26.3-D
Federal Income	1,783,000	1,670,000	113,000	6.8
All Other	1,268,460	1,166,032	102,428	8.8
Total Taxes	4,310,998	4,546,078	235,080-D	5.2-D
Railway Operating Income	5,152,003	5,979,865	827,862-D	13.8-D
Equipment Rents—Net Dr.	940,469	1,200,286	259,817-D	21.6-D
Joint Facility Rents—Net Dr.	93,375	91,050	2,325	2.6
Net Ry. Operating Income	4,118,159	4,688,529	570,370-D	12.2-D
Net Income*	1,286,317	1,759,289	472,972-D	26.9-D
Ratios				
Operating Ratio	79.71	77.61	2.10	
Tax Ratio	9.24	9.67	.43-D	
Total Operating and Tax Radio	88.95	87.28	1.67	

* After all contingent charges, including sinking funds on First Mortgage Bonds and General Mortgage Bonds and maximum permissible charges for Capital Fund. It is contemplated that such charges, if earned, will be taken up in December 1949 accounts.

[fol. 916]

Schedule No. 44

Atlantic Coast Line Railroad Company
Seaboard Air Line Railroad Company

Condensed Income Account
Four Months 1949 Compared with Four Months 1948

	January 1 to April 30			
	1949	1948	Increase Decrease-D	Percent
Operating Revenues				
Freight	$73,444,607	$74,933,030	$1,488,423-D	2.0-D
Passenger	14,763,168	14,929,736	166,568-D	1.1-D
Mail	2,006,391	1,778,737	227,654	12.8
Express	1,309,197	2,066,425	757,228-D	36.6-D
All Other	3,295,418	3,587,760	292,342-D	8.1-D
Total Railway Operating Revenues	94,818,781	97,295,688	2,476,907-D	2.5-D
Operating Expenses				
Maintenance of Way & Structures	14,203,261	15,319,778	1,116,517-D	7.3-D
Maintenance of Equipment	16,522,463	15,048,808	1,473,655	9.8
Traffic	2,568,042	2,425,587	142,455	5.9
Transportation	37,151,171	38,514,338	1,363,167-D	3.5-D
Miscellaneous Operations	1,914,836	2,023,750	108,914-D	5.4-D
General	2,590,611	2,391,271	199,340	8.3
Total Operating Expenses	74,950,384	75,723,532	773,148-D	1.0-D
Net Revenue from Railway Operations	19,868,397	21,572,156	1,703,759-D	7.9-D
Taxes				
Payroll	2,514,144	3,573,738	1,059,594-D	29.6-D
Federal income	3,983,000	3,470,000	513,000	14.8
All other	2,813,854	2,502,340	311,514	12.4
Total Taxes	9,310,998	9,546,078	235,080-D	2.5-D
Railway Operating Income	10,557,399	12,026,078	1,468,679-D	12.2-D
Equipment Rents—Net Dr.	2,029,279	2,620,541	591,262-D	22.6-D
Joint Facility Rents—Net Dr.	51,474	71,487	20,013-D	28.0-D
Net Railway Operating Income	8,476,646	9,334,050	857,404-D	9.2-D
Net Income	6,448,731	7,547,519	1,098,788-D	14.6-D
Ratios				
Operating Ratio	79.05	77.83	1.22	
Tax Ratio	9.82	9.81	.01	
Total Tax and Operating Ratio	88.87	87.64	1.23	

[fol. 917] RESPONDENT'S EXHIBIT No. 2

Schedule —

Property Investment and Rate of Return, Southern Region excluding Atlantic Coast Line Railroad Co., Seaboard Air Line Railroad Co., and Florida East Coast Railway Co.

Year	Investment in Railway Property Used in Transportation Service, Including Cash and Material and Supplies		Net Railway Operating Income	Rate of Return on	
	Total	Less Depreciation		Gross Investment	Gross Investment Less Depreciation
1936	$2,538,259,355	$2,257,850,048	$ 72,725,649	2.87	3.22
1937	2,546,671,773	2,263,637,030	64,955,304	2.55	2.87
1938	2,556,871,209	2,262,921,598	55,839,425	2.18	2.47
1939	2,564,737,481	2,278,521,083	72,518,995	2.83	3.18
1940	2,555,966,344	2,260,402,728	73,035,057	2.86	3.23
Average Year 1936–1940	2,552,501,232	2,264,666,497	67,814,886	2.66	2.99
1941	2,624,369,677	2,313,626,049	117,683,916	4.48	5.09
1942	2,661,905,093	2,329,674,065	158,047,129	5.94	6.78
1943	2,734,555,118	2,355,913,669	146,880,935	5.37	6.23
1944	2,767,740,577	2,339,956,757	125,337,488	4.53	5.36
1945	2,820,498,853	2,292,077,856	99,616,217	3.53	4.35
Average Year 1941–1945	2,721,813,864	2,326,249,679	129,513,137	4.76	5.57
1946	2,779,438,692	2,207,409,154	69,820,775	2.51	3.16
1947	2,923,690,714	2,330,893,169	90,387,773	3.09	3.88
1948	3,009,016,664	2,390,120,261	118,801,454	3.95	4.97

Note—Figures above include: AGS—A&St. A. B.—A&WP—C of Ga.—C&WC—CNO&TP—Clinchfield—Col. & Greenville—Georgia—Ga. & Fla.—G. S. & F.—G. M. & O. —I. C.—L&N—Miss. Cent.—NC&St. L—N.O. & N.E.—Nor. Sou.—Sou.—Tenn. Cent.—W. of A.

[fol. 918] RESPONDENT'S EXHIBIT No. 3

Net Railway Operating Income and Net Income, Southern Region, exclusive of A. C. L. R. R., S. A. L. R. R., and F. E. C. Ry. and as compared with those three lines, Four Months 1949 compared with Four Months 1948.

	January 1 to April 30		Increase Decrease–D	
	1949	1948		Percent
Southern Region, except ACL, SAL & FEC				
Net railway operating income	$29,265,281	$31,674,821	$2,409,540–D	7.6–D
Net income	17,709,233	18,715,212	1,005,979–D	5.4–D
ACL–SAL–FEC				
Net railway operating income	10,197,383	11,325,036	1,127,653–D	10.0–D
Net income	6,696,793	8,106,806	1,410,013–D	17.4–D

[fol. 919]

I.C.C. Docket No. 30140

RESPONDENT'S EXHIBIT No. 4

Witness: G. L. Parsons

Seaboard Air Line Railroad Company

Comparison of Freight Service Transportation Expenses on North and South Florida Divisions with System and System Exclusive of North and South Florida Divisions' Transportation Expenses, Year 1948

	North and South Florida Divisions	System	System Excl. North & South Florida Divisions	Percent N.&S. Florida Divs. of Balance of System
1. Miles of Road Operated	1,491.82	4,152.43	2,660.61	56.07
2. Superintendence and dispatching trains:				
Accounts 371-372-407	$ 815,060	$ 2,235,048	$ 1,419,988	57.40
3. Station service expenses:				
Account 373—Station employees	2,262,014	5,607,883	3,345,869	67.61
Accounts 374-375-376	153,946	439,007	285,061	54.00
Total	2,415,960	6,046,890	3,630,930	66.54
4. Yard service expenses:				
Account 378—Yard conductors and brakemen	838,598	2,559,594	1,720,996	48.73
Account 380—Yard enginemen	255,376	873,205	617,829	41.33
Account 381—Yard motormen	291,367	651,025	359,658	81.01
Account 382—Yard switching fuel	227,981	694,371	466,390	48.88
Accounts 377-379-385-386-387-388-389	572,891	1,812,587	1,239,696	46.21
Total	2,186,213	6,590,782	4,404,569	49.64
5. Train service expenses:				
Account 392—Train enginemen	812,073	2,495,066	1,682,993	48.25
Account 393—Train motormen	381,214	1,248,974	867,760	43.93
Account 394—Train fuel	2,068,171	7,042,909	4,974,738	41.57

Account 397—Water for train locomotives	75,262	256,261	180,999	41.58
Account 398—Lubricants for train locomotives	107,465	302,572	195,107	55.08
Account 399—Other supplies for train locomotives	43,995	96,506	52,511	83.78
Account 400—Enginehouse expenses—train	508,660	1,346,161	837,501	60.74
Account 401—Trainmen	1,514,315	4,587,152	3,072,837	49.28
Account 402—Train supplies and expenses	650,935	1,690,147	1,039,212	62.64
Total	6,162,090	19,065,748	12,903,658	47.75
6. All other transportation expense accounts	1,176,730	3,266,794	2,090,064	56.30
7. Grand total transportation expenses	$ 12,756,053	$ 37,205,262	$ 24,449,209	52.17
8. Revenue ton miles (000)	2,229,169	8,205,360	5,976,191	37.30
9. Transportation expenses per 1000 revenue ton miles	$ 5.72	$ 4.53	$ 4.09	139.85
10. Freight train miles	2,777,635	9,544,203	6,766,568	41.05
11. Train service expenses per train mile	$ 2.218	$ 1.998	$ 1.907	116.31
12. Gross ton miles (000) excl. locomotive and tender	5,344,608	19,385,587	14,040,979	38.06
13. Loaded freight car miles	71,946,321	284,193,345	212,247,024	33.90
14. Empty car miles	45,406,498	143,482,847	98,076,349	46.30
15. Total car miles	117,352,819	427,676,192	310,323,373	37.82
16. Percent empty of loaded car miles	63.11	50.49	46.21	136.57
17. Loaded car miles per freight train mile	27.60	29.78	30.60	90.20
18. Crew wages per loaded car mile	$ .03763	$ .02931	$ .02650	142.00
19. Train service cost per loaded car mile	$ .08565	$ .06708	$ .06080	140.87
20. Transportation expenses per loaded car mile	$ .17730	$ .13091	$ .11519	153.92
21. Revenue ton miles per mile of road	1,494,261	1,976,038	2,246,173	66.52

[fol. 920] RESPONDENT'S EXHIBIT 11

Direct Testimony of C. L. Hinnant in ICC Docket 30140, Florida 13th Section Case

Q. Please state your name, address, and occupation.

A. C. L. Hinnant, Atlantic Coast Line Building Wilmington, N. C. I am Assistant Freight Traffic Manager of the Atlantic Coast Line Railroad Company.

Q. Please briefly outline your experience in handling rate matters.

A. I have been employed by the Atlantic Coast Line Railroad Company for something over 25 years as an official in its Freight Traffic Department, with duties solely in connection with the adjustment of rates, charges, rules and regulations pertaining to the transportation of freight and the interpretation of freight tariffs. For nearly 20 years prior to this, I was employed in the Freight Traffic Departments of the Atlantic Coast Line Railroad or other southern railroads with duties always solely pertaining to the issuance of tariffs, adjustments of rates and allied matters.

Q. Are you familiar with the issues involved in this case?

A. I am.

Q. Will you please state briefly the steps taken by the Florida railroads to obtain from the Florida Railroad and Public Utilities Commission the same measure of increases in the Florida intrastate freight rates and charges as granted on interstate traffic in Ex Parte 162?

A. At the time the petitions were filed with the Interstate Commerce Commission which resulted in the Ex Parte 162 and 166 cases, copies of such petition were sent to the state commissions of the various states including the Florida Railroad and Public Utilities Commission. The record in these cases were furnished to the state commissions. When the report in Ex Parte 162, dated December 5, 1946, reported 266 ICC 537, was received, application was promptly filed with the Florida Commission, the date on which the application was forwarded to the Florida Commission being December 7, 1946, seeking the same measure of increase on intrastate traffic as had just been received on interstate traffic. The Florida Commission, by its Notice No. 857, in [fol. 921] Docket 1538, of December 19, 1946, assigned hear-

ing for Tampa, Fla., on February 4, 1947. Following that hearing, the Florida Commission issued its Order 1443 in Docket 1538, dated March 11, 1947. That order is reproduced as Appendix 2 beginning at page 18 of the petition which resulted in the institution of this investigation. Therein, the Florida Commission granted the increases sought on all except a few commodities, but those few exceptions represent an immense tonnage. In my exhibit, which will be referred to later, there is set forth specifically the exceptions to the general interstate increases which were made in this order of the Florida Commission. The Florida roads, on April 1, 1947, petitioned the Florida Commission for reconsideration insofar as its Order 1443 excepted certain commodities from the full increases as authorized on interstate traffic. That petition was assigned for hearing on April 22, 1947, but the hearing date was postponed and, by its Order 1464 in Docket 1538, of October 21, 1947, that petition was denied without hearing. The railroads then, on November 24, 1947, petitioned for vacation of Order 1464 and the Florida Commission granted further hearing on January 27, 1948. No order was issued as result of that hearing, but the petition was reassigned for hearing on June 23, 1948, in conjunction with the hearing involving the Ex Parte 166 case. In its order in the Ex Parte 166 case, FR&PUC Docket 1574, dated November 13, 1948, the Florida Commission denied the petition for reconsideration of the Ex Parte 162 matter on the commodities which had been excepted from the full measure of the interstate increases by its original Order in Docket 1538.

Q. Please now state briefly the handling before the Florida Commission to obtain the same increases on Florida intrastate traffic as was granted on interstate traffic in Ex Parte 166.

A. Petition was filed with the Florida Commission on September 13, 1947, seeking emergency increases the same as had been petitioned for on interstate traffic in the Ex Parte 166 proceedings. The Florida Commission assigned this for hearing on October 15, 1947, and in the meantime, the first report of the Interstate Commerce Commission in Ex Parte 166 having been released October 6, 1947, reported 269 ICC 33, a copy of that order was forwarded to the

[fol. 922] Florida Commission on October 8, 1947, indicating that at the hearing on October 15, 1947, request would be made for authority to apply intrastate the same increases which the Interstate Commerce Commission had, by its order of October 6, 1947, granted on interstate traffic. The hearing before the Florida Commission was had as scheduled, under its Docket 1574. By its Order 1466, dated November 10, 1947, that application was denied. Florida carriers petitioned for reopening and further hearing in FR&PUC Docket 1574, and the Florida Commission assigned that petition for hearing on January 22, 1948. In the meantime, the Interstate Commerce Commission had released its second interim report in Ex Parte 166, dated December 29, 1947, reported 270 ICC 81, and copy of that decision was forwarded to the Florida Commission on January 2, 1948, with application for authority to substitute the increases as authorized in the second interim Ex Parte 166 petition for those which had been petitioned for on Florida intrastate traffic in the prior application. The hearing which had been scheduled for January 22, 1948, was deferred until January 27, 1948, at which time the second interim increase under Ex Parte 166 was considered. By its Order 1466 (A) in Docket 1574, dated April 9, 1948, the Florida Commission authorized the increase then sought, which was 20 per cent generally, but subject to maxima on certain commodities, except that no increase in Florida was permitted on sugar cane moving from the fields to the mill, nor on fertilizer and fertilizer materials so designated in rate tariffs, nor on resinous wastewood moving to Pensacola, Fla. The increase granted on road aggregates was 10 percent with maximum *with maximum* of 30 cents per net ton instead of the 20 per cent increase with maximum of 30 cents per net ton which had been obtained at that time on interstate traffic. On class rates and other rates made with relation thereto, the increase then authorized was 10¼ per cent instead of the 20 per cent which had been obtained on interstate traffic. By its Order 1466 (B) in Docket 1574, dated May 12, 1948, the Florida Commission amended its Order 1466 (A) so as to include dolomite and agricultural ground limestone in the list of commodities on which no increase under Docket 1574 (the Ex Parte 166 proceeding) would be permitted. The

[fol. 923] third interim decision of the Interstate Commerce Commission in Ex Parte 166 was dated April 13, 1948, reported at 270 ICC 93. The Florida railroads filed supplemental petition in FR&PUC Docket 1574 on April 23, 1948, seeking authority to substitute the increases which had been authorized by the third interim decision in Ex Parte 166 for those which had been authorized in Florida in that Commission's Order 1466 (A). Such petition was assigned for hearing May 31, 1948, but that date was postponed to June 23, 1948. Before the Florida Commission rendered a decision the final report in Ex Parte 166 had been received, such report being dated July 29, 1948, reported 270 ICC 403. On August 3, 1948, Florida railroads filed a supplemental petition in FR&PUC Docket 1574, asking the Florida Commission to substitute the increases as authorized on interstate traffic in the final report for those which had been presented at the hearing on June 23, 1948, there being so few differences between the third interim and final decision in Ex Parte 166 that the Florida Commission was asked to render its decision on the basis of what had been presented at the June 23, 1948 hearing. The decision of the Florida Commission was given in its Order 1466 (C) in Docket 1574 dated November 13, 1948. That report and order is reproduced in Appendix 3, beginning at page 58 of the petition which resulted in the institution of this investigation. In that order, the Florida Commission denied the petition for rehearing on the exceptions which had been made by its Order 1464 in Docket 1538, the Ex Parte 162 case; it denied in general the further increases sought in the Ex Parte 166 case, devised a new scale of rates for substitution for the interim Docket 28300 class rate adjustment within Florida, and removed the Ex Parte 166, FR&PUC Docket 1466 (A) increase on phosphatic sand or clay, and included sulphur in the fertilizer group as to which no increase was authorized under the Ex Parte 166 case as and when taking the fertilizer rates.

Q. At the hearings before the Florida Railroad and Public Utilities Commission involving the application for increases the same as had been granted under Ex Parte 162 and 166, Florida Commission's Dockets Nos. 1538 and 1574, did the applicant railroads rely principally on the record

which had been made at the hearings before the Interstate Commerce Commission in Ex Parte 162 and 166, copies of which records had been furnished the Florida Commission, [fol. 924] or was evidence entered?

A. The applicant railroads presented full and complete testimony to the Florida Commission at these hearings. The first hearing in its Docket 1538 was on February 4 and 5, 1947, at which two accounting witnesses presented four exhibits containing 18 pages and two traffic witnesses presented two exhibits containing 35 pages. At the hearing in FR&PUC Docket 1574 which began January 27, 1948 and lasted through January 30, 1948, four days, three accounting witnesses presented 20 exhibits containing 62 pages and three traffic witnesses presented 33 exhibits containing 73 pages. At the hearing on June 23-24, 1948, in FR&PUC Docket 1574, two accounting witnesses presented two exhibits containing 16 pages and three traffic witnesses presented 16 exhibits containing 30 pages. The presentation made by applicant railroads to the Florida Commission was as full and complete as they knew how to make it and contained all the information which would have been furnished in proceedings before that Commission which were in no way connected with interstate increases or rates.

Q. Do you have an exhibit which will set forth specifically the difference between the Ex Parte 162 and 166 increases as authorized by the Interstate Commerce Commission on interstate traffic and those which have been obtained under FR&PUC Dockets 1538 and 1574 on intrastate Florida traffic?

A. I have one exhibit which has been divided into several sections, each section being given a separate letter, which I now offer for identification as Exhibit No. 12. Section A of my exhibit sets forth the differences between the increases obtained on interstate traffic and those which have been obtained on Florida intrastate traffic. This section of the exhibit also shows on each of the items mentioned what it is we are seeking from the Interstate Commerce Commission in this investigation.

Q. Did the Florida railroads make a traffic test to indicate the approximate yearly loss in revenue sustained by failure to obtain on Florida intrastate traffic the same increases

which have been obtained under Ex Parte 162 and 166 on interstate traffic?

A. They did make such a test. For that purpose there were selected four weeks during the year 1948 for carload traffic, these being the second week for each quarter of the [fol. 925] year, namely, the weeks beginning January 11, April 11, July 11, and October 10, 1948. For the less carload test they selected only one week, namely, that beginning October 10, 1948. The Coast Line, East Coast, L&N, and Seaboard obtained copies of freight bills for carload shipments delivered by those roads during the four weeks test period, and those four roads, plus the A&StAB, obtained freight bills for less carload traffic delivered within the week beginning October 10, 1948. These particular weeks for the test period were selected after very careful consideration as being as representative as any that could have been chosen. There are so many more less carload shipments than carload shipments, and the work is so onerous in preparing the traffic test, that it was consid-red that a one week test period on the less carload shipments would be sufficiently representative. Of course, it will be noted that the four weeks test period for carload shipments is spread throughout the year, and covers one week each in a winter month, a spring month, a summer month, and an autumn month.

In setting down the terminations for the test period, there were excluded several specific movements for which the test period would probably not be representative for the entire year. The movements excluded from the test period were sugar cane from origins on the Coast Line and Florida East Coast to Clewiston, Fla., which is a seasonal movement, and on which we have a complete record of the 1948-1949 season's movement; three special movements of logs in train loads which are local to the Coast Line and for which we have complete record of the movement, and on wet phosphate rock from the mines or washers to drying plants on which, for reasons which will later be shown, an estimate has had to be made.

All of these shipments which terminated in the test period were rerated as of the intrastate rates today in effect, that is, as of the basic rates increased in accordance with orders of the Florida Commission, Nos. 1443 and 1466 (C), its

Dockets 1538 and 1574. Such rerating will show, as of today, the revenue on the shipments terminated in Florida during the test period. It was necessary to make this [fol. 926] particular rerating because the increases under Order 1466 (A) or 1466 (C) were not in effect during the entire year 1948. Then these same shipments were rerated by using the Florida intrastate basic rates and applying thereto the increases which had been authorized on interstate traffic under Ex Parte 162 and 166. The difference between the rerating first mentioned and that last mentioned will indicate the revenue loss during that period but on a current basis. As the four weeks test period for carload shipments is 1/13 of a year the amount of loss sustained, stated on the current basis, for the four weeks test period should be multiplied by 13. Similarly, the amount of loss sustained on the less carload shipments should be multiplied by 52, in order to arrive at an annual estimate of the revenue loss.

In Section B of my exhibit on pages B-1 through B-63, there have been set forth the carload movements during the four weeks test period as terminated on the Coast Line, Florida East Coast, L&N, and Seaboard, this exhibit showing the commodity, the Florida origin, the Florida destination, the total weight of the shipments, the charges at the present intrastate rates, and the charges as they would be under rates sought by this proceeding. The latter is shown under the column headed "Basis Sought Through X-166." Then there is shown the difference between the present charges and those sought, by totals as to each of the commodities. Pages B-2 through B-23 show the terminations on the Coast Line for the test period and on page B-23 there is shown the grand total for all of the Coast Line terminations for the test weeks and what they would represent projected to an annual basis. Pages B-24 through B-36 show similar information for the terminations by the Florida East Coast. Pages B-37 through B-39 show similar information for the L&N, and pages B-40 through B-63 show similar information for carload terminations on the Seaboard.

Pages B-64 through B-71 deal with the less carload intrastate movements during the one week test period. We have

not attempted to show the separate commodities, but have [fol. 927] indicated terminations of intrastate L. C. L. traffic by pounds, showing the revenue at the present rates and the revenue at the sought rates, listing each destination separately. On pages B-65 through B-71, there has also been shown the interstate terminations of less carload freight during the same test period and what the interstate charges would be on that interstate movement at rates including the Ex Parte 162 and 166 increases, but not including the Ex Parte 168 increase.

On page B-72 there are shown the figures for movements under the five special adjustments which have heretofore been mentioned as not being included in the data obtained by terminations during the test period. The tonnage for sugar cane, and the number of cars and number of trains in the special movement of logs as shown on page B-72 were obtained from records in the office of the Coast Line, these records being reports made monthly by our representatives in the particular territory, showing the exact movement during each month; except that for lines 7, 8, and 9, the log movement in train loads from points on the Coast Line's Everglades Branch to Lacoochee had to be estimated, since the movement only started in April, 1949. On the wet phosphate rock, estimate was made as shown in Note 2 at the bottom of page B-72.

The summary of pages B-2 through B-72 is shown on page B-73, and indicates a total estimated annual revenue loss of $1,795,437.34 prior to adjustments mentioned hereinafter. I call attention to the fact that the data shown in Section B of my exhibit does not include any terminations on the Georgia, Southern and Florida Railway; Apalachicola Northern Railway; Live Oak, Perry, and Gulf Railroad, South Georgia Railway, Marianna and Blountstown Railroad, or Trans-Florida Central Railroad, nor the carload terminations on the Atlanta and St. Andrews Bay Railway. The figure for the approximate annual revenue loss to all Florida roads would obviously be greater had the terminations on those roads been included.

[fol. 928] The figure for the annual revenue loss indicated must, of course, be readjusted by reason of the withdrawal from this proceeding, of the rates on road aggregates. Assuming that all of the commodities listed in Section B of

my exhibit under the heading of lime rock, sand, gravel, crushed stone, rock, roadway material, limestone and slag are eliminated, it would reduce the yearly loss of revenue by $711,697.45.

The Florida East Coast Railway has asked that the rates on fertilizer and fertilizer materials, including superphosphate, moving locally on the Florida East Coast Railway, be excluded from the increase. This would reduce the annual revenue loss by $62,499.19.

Some adjustment would, of necessity, have to be made in [fol. 929] the revenues shown on shipments of logs on pages B-9 and B-10 for Coast Line terminations, and on pages B-49 and B-50 for Seaboard terminations, due to the transit refunds on logs which are often, but not always, obtained by the shipper or receiver. It will be explained later on that net transit rates are published for single line hauls on logs, and in extremely few instances some net transit rates are published for joint line hauls. To make allowance for this, I have refigured all of the movements listed on pages B-9 and B-10, which were terminated by the Coast Line, where it would have been possible to have made readjustment in the revenue to basis of the net transit rates. There are five movements shown, namely those at lines 46, 54, 60, on page B-9, and at lines 22 and 25 on page B-10, on which there is no available or published net transit rate. There are seven movements listed, namely, at line 50 on page B-9 and lines 2, 3, 19, 24, 28, and 29 on page B-10 where the net transit rates, subject to minimum weight of 60,000 pounds, which is that applicable in connection with the net transit rates, would produce higher charges than the local or open rates at actual weights. On those two classes of shipments, no refund would be made by reason of transit privileges. On the remainder of the shipments of logs as set forth on pages B-9 and B-10, I have recalculated the charges under the net transit rates at the present level, and as sought in this proceeding. The result of that recalculation shows up as follows: The charges at the present rates, on shipments where transit refund may have been made would be $5,264.18, and at the rates sought in this proceeding would be $6,691.85. The present charges and those sought in this proceeding on the shipments of these logs where transit cannot be used, total $1,661.23 at the present rates and $2,074.50 under the

sought charges. The total, on basis of such recalculation, is $6,925.41 at present rates and $8,766.35 at the rates sought in this proceeding, a difference of $1,840.94, instead of the difference of $2,026.91, as shown on page B-10.

Assuming the same relative reduction in the present and sought charges for the shipments of logs terminated with the Seaboard shown on pages B-49 and B-50, the revenue loss on those shipments would be $613.40 instead of $675.37 as shown on page B-50.

[fol. 930] The deductions which should be made by reason of the withdrawal of rates on roadway aggregates from this proceeding, by reason of the request of the Florida East Coast Railway that no increases be made in its local rates on fertilizer and fertilizer materials, and by reason of the adjustment of rates used on logs to be on the net transit rate to the fullest extent such transit rates would have been applicable are, respectively, $711,697.45, $62,499.19 and $3,223.22. This is a total of $777,419.86. Deducting that amount from the total estimated annual revenue loss of $1,795,437.34, as shown on page B-73, leaves $1,018,017.48 as the estimated annual revenue loss.

[fol. 931] It is not likely that the reduction would be as much for the Seaboard as for the Coast Line, assuming net transit rates were applied where available, because out of 79 cars terminated by the Seaboard, 54 of them would not be subject to transit by reason of originating at non-transit origins, and more particularly by reason of the minimum weight being so much less than in connection with the net transit rates, whereas only 38 such cars were found to be in that category of the 218 cars terminated by the Coast Line.

There were no shipments of logs terminated on the Florida East Coast or the L&N during the test period.

Q. In Section B of your exhibit did you include any shipments which were interstate in character?

A. Every endeavor was made to hold the shipments listed in Section B of my exhibit to those moving on intrastate Florida rates. There was not, during the test period, much movement from the ports, ex vessel. In every instance where the freight bill gave indication, either by reference to ex vessel, or where the rate assessed would indicate that

interstate rate was used, we excluded that shipment from those included in Section B of my exhibit. As the routes of movement are shown on freight bills, wherever we found a movement between two Florida points which moved outside the state, there were excluded. In quite a number of instances there were shipments of grain products or mixed feed, where a portion of the shipment was interstate in character, being handled under transit, but another portion of the same shipment was intrastate in character. In such instances, we included the intrastate portion of such shipments, but not the interstate portion in the tabulations shown in Section B of my exhibit. I believe that no one of the shipments included in Section B was interstate in character.

Q. Did you also obtain record of the terminations of interstate traffic at Florida destinations during the test period?

A. I did, as to carload traffic from all origins, and as to less than carload traffic from origins in southern territory, including the border points between southern and official territories. The interstate terminations of less than car- [fol. 932] load traffic originating in official territory were not obtained, because, first, it was felt that the originations in southern territory on less than carload traffic would be sufficiently comprehensive and, second, because there is so much less than carload traffic from official territory to Florida, that it would have greatly multiplied the work had we obtained that movement from official territory. As it was, there were fifteen to eighteen thousand of these waybills which were analyzed on the intrastate less carload shipments, and on interstate less than carload shipments originating in southern territory.

Q. What was the purpose in obtaining the record of interstate movements during the test period?

A. To ascertain the extent to which the same commodities move intrastate in Florida and interstate to Florida.

Q. Did you make such a comparison?

A. I did, and in Section C of my exhibit, pages C-1 through C-43, I have shown the result of that study. This section of the exhibit represents what may be termed matched movements. Pages C-2 through C-36 show, by-commodities, in alphabetical order, the carload intrastate move-

ments for which we found an interstate movement of the same commodity to either the same Florida destination or to some other Florida destination, usually one in the same vicinity. As illustrating this statement, let us use lines 1 to 4 on page C-2, showing matched movements of acid phosphate. Column 1 shows the Florida origins; Column 2 the Florida destinations; Column 3 the rate making miles; Column 4 the weight of the shipments which moved between these points during the test period; Column 5 the present rate applicable within Florida; and Column 6 the Florida rate increased by the full measure of the Ex Parte 162 and 166 interstate increases. The interstate movement of this commodity is shown beginning at Column 7 which indicates the interstate origin; Column 8 indicating the Florida destination; Column 9 the rate making miles for the interstate movement; Column 10 indicating the weight of the interstate movement during the test period; and Column 11 the applicable rate for the interstate movement. From line 3, it is seen that there was a movement of 117,300 [fol. 933] pounds of acid phosphate from East Tampa, Fla., to Jacksonville, Fla., a distance of 205 miles, and there was also a movement of the same commodity, 506,500 pounds from Savannah, Ga., to Jacksonville, Fla. From line 2, it is noted that there is a movement from Pierce, Fla., to Cottondale, Fla., intrastate, while line 4 shows a movement of the same commodity from Moultrie, Ga., to Tallahassee, Fla., which is in the same general section of Florida as is Cottondale. In all instances, the rates on the interstate movements have been increased by the full amount of the Ex Parte 162 and 166 increases, and are today subject, further, to the Ex Parte 168 increases. The full amount of the Ex Parte 162 and 166 increases have not been so far obtained on Florida intrastate movement, as more specifically set forth in Section A of my exhibit. On the acid phosphate, which is another name for superphosphate, and really should have been included with fertilizer and fertilizer materials, as shown on pages C-13 through C-15, no increase was obtained in Florida, corresponding to the 25 per cent increase obtained interstate under Ex Parte 166.

I would call attention to the large number of commodities on which we have found carload movements from inter-

state origins corresponding to movement from intrastate origins.

Pages C-39 through C-43 list 80 commodities in alphabetical order on which we found an L. C. L. movement intrastate in Florida and movement of the same articles in L. C. L. quantities from points in southern territory to Florida. The number of shipments originated in each of the southern states, including Florida, and which were terminated in Florida, during the one week test period, are shown. For example, as indicated by line 1 on page C-40 there were terminated by the five Florida roads making the test on less carload shipments for the one week beginning October 10, 1948, 20 less carload shipments of agricultural implements and parts which originated in Florida, five which originated in Alabama, 21 which originated in Georgia, 2 which originated in Kentucky, 5 which originated in North Carolina, and 4 which originated in Tennessee. It will be noted that Illinois, Indiana, Ohio, and West Virginia are [fol. 934] listed as origin states. The only points included in those states are those which are northbank Ohio River crossings or those in the southern portion of West Virginia for which the Docket 13494 Appendix K-2 or Appendix K-2 plus Appendix L-1 rates were published to southern territory.

Q. Will you please now attempt to explain the class rate adjustment as applicable between points in Florida?

A. Prior to February 1, 1929, class rates on Florida intrastate traffic were in no way related to the class rates applicable elsewhere in southern territory. Each road had its class rate scale, which had been prescribed by the Florida Railroad Commission and which was governed by Florida Classification. The mileage scale of each road applied for its single line distance and joint rates were usually made on combination deducting 10 per cent from each factor where the haul involved two roads and deducting 20 per cent from each factor where the haul involved three or more roads. Effective February 1, 1929, under authority contained in Florida Railroad Commission's Order No. 977, its Docket No. 1000, dated October 29, 1928, the class rates were placed on the general level which had been approved on interstate traffic in I. C. C. Docket 13494, reported at 100

ICC 513 with supplemental reports at 109 ICC 300, 113 ICC 200 and 128 ICC 567.

I would like to mention here that at the time the reports of the Interstate Commerce Commission in Docket 13494 were released, no order requiring establishment and maintenance of the rates found reasonable therein was issued, the Commission having indicated that it would withhold the issuance of order if the railroads would advise that they would comply with the decision. The three principal south Florida roads, Atlantic Coast Line, Florida East Coast, and Seaboard Air Line, were unwilling to assume the responsibility for the severe reductions which would be occasioned by applying the Docket 13494 rates to, from and within the Florida peninsula, and, therefore, advised the Commission that unless ordered to do so they would not accept the decision as to the south Florida rates. Thereupon, by its [fol. 935] order dated October 27, 1927 the Interstate Commerce Commission required the Docket 13494 rates to be applied on interstate class rate traffic from, to and within the Florida peninsula.

The basis for the interstate rates prescribed in ICC Docket 13494 is the mileage scale set forth in Appendix K-2 or that decision, 113 ICC at pages 207 and 208 with addition of arbitraries for the haul south of the line of the Seaboard Air Line Railroad from Jacksonville, Fla., to Chattahoochee (formerly River Junction), Fla., as set forth in Appendix L-2 shown at 128 ICC 602. That scale plus the Florida arbitraries, where they were to be added, was applied to the shortest distance via which carload freight can be transported without transfer of the lading, and was and is applied under a grouping system whereby a key point is set up for other points within a rather short radius from such key point, the distances being figured from and to the key points. This same method of figuring the distances has been continued down through today, and while the grouping or key point system has also been continued, the original grouping has, in the meantime, been revised so that today the groups are a little larger than they were when the system was first established.

In authorizing the Docket 13494 basis of rates within Florida, the Florida Railroad Commission excepted prac-

tically all of the commodities which, under the Florida Classification, were rated as lettered classes lower than Class D, or those which were rated a percentage of 5th Class or 6th Class. Florida Classification, and the old system of class rates, still remain in effect on a relatively few commodities, probably the most important of which, from a standpoint of movement, are machinery and machines, carloads, stoves and ranges, carloads, and insecticides, carloads and less than carloads, insofar as concerns commodities which usually move on class or exceptions ratings elsewhere in the South. Florida Classfication and the old system of class rates also apply intrastate in Florida on several commodities, such as some of the fertilizer materials, pulpwood, live stock and live poultry which usually move on commodity rates elsewhere in the South. That which follows with regard to the class rates should be understood as: (a) class rates which are governed by [fol. 936] Southern Classification and exceptions thereto and by the system of class rates which became effective February 1, 1929; and (b) the system of class rates known as the interim Docket 28300 rates, which are governed by the Southern Classification alone, which became effective August 22, 1947.

I have mentioned that subsequent to the initial publication of the Docket 13494 system of class rates in Florida there has been a regrouping of stations. This was authorized under Florida Railroad Commission's Order No. 1215 of October 21, 1935. The changes in the level of the class rates in Florida, since they were established, effective February 1, 1929, on the Docket 13494 level, have been as follows:

On June 1, 1936, the rail carriers voluntarily waived the Florida peninsula arbitraries in connection with intrastate rates on articles rated 7th Class (35 per cent of first class) or higher, on traffic to or from the Florida peninsula, when moving from or to Chattahoochee, Fla., or points east thereof. This waiver of the arbitraries was an effort to meet motor truck competition. The increases which had been authorized under Ex Parte 123, effective March 28, 1938, were made applicable on Florida intrastate traffic, by authority of Order No. 1248 of Florida Railroad Com-

mission, in its Docket No. 1308, effective June 6, 1938. Effective July 7, 1941, the rates for 190 miles and under were revised in line with revision made throughout southern territory as a result of prescription by Interstate Commerce Commission in Docket 27900, 238 ICC 225, or minimum class rates for application on North Carolina intrastate traffic. The same reduction in cents per 100 pounds was made in the Florida intrastate rates, 190 miles and under, as was made on southern interstate traffic. On March 28, 1942, by authority of Order 1349 of Florida Railroad Commission in its Docket 1461, the same increases were applied on Florida intrastate traffic as had been authorized under Ex Parte 148 for interstate traffic. These increases were suspended, both interstate and intrastate, effective May 15, 1943, but were reinstated both interstate and intrastate, effective [fol. 937] July 1, 1946, the Florida Railroad Commission having authorized the restoration of the increases on intrastate traffic.

This brings us down to the Ex Parte 162 increase. By its Order No. 1443, in its Docket No. 1538, dated March 11, 1947, the Florida Railroad & Public Utilities Commission authorized the same increases intrastate on class rates as had been authorized, effective January 1, 1947, on interstate traffic. This increase, 20 per cent on class traffic, took the place of — increase which had been authorized under Ex Parte 148. increase.

On August 22, 1947, the interim adjustment under ICC Docket 28300, 262 ICC 447, was made effective on both interstate and Florida intrastate traffic, but subject to 22½ per cent increase under Ex Parte 162. In publishing this reduction in Florida, the Florida peninsula arbitraries were not waived on Classes 35 (or Classes 35-R or 35-V) and higher, as was and is done in connection with the Docket 13494 rates on traffic originating or terminating at Chattahoochee, Fla., or east thereof, but the normal Docket 13494 rates, subject to a 20 per cent increase under Ex Parte 162, were alternated with the interim Docket 28300 rates. For example, on a commodity rated 7th Class in the Classification, proper, and not given an exception rating, if the Docket 13494 7th Class rate, waiving Florida arbitrary, should be less than the interim Docket 28300 7th Class rate, which includes the

Florida arbitrary, the Docket 13494 7th Class rate, waiving the Florida arbitrary, would be applied.

In response to petition to increase the Florida intrastate rates in the same amount as increases which had been authorized in the first interim decision in Ex Parte 166, the Florida Railroad and Public Utilities Commission by its Order 1466 in its Docket 1574, dated November 10, 1947, denied that petition. Following the second interim decision in Ex Parte 166, which granted generally a 20 per cent increase with certain exceptions, and after further hearing [fol. 938] before the Florida Railroad and Public Utilities Commission, that Commission issued its Order 1466 (A) in Docket 1574, dated April 9, 1948. So far as that order related to class rates, it authorized increases of 10¼ per cent in connection with both Docket 13494 and the interim Docket 28300 rates, and such increase on class rates was made effective April 28, 1948. In its Order 1466 (C) in Docket 1574, dated November 13, 1948, the Florida Railroad and Public Utilities Commission had before it the third interim order and the final order of the Interstate Commerce Commission in Ex Parte 166, and declined to authorize the 25 per cent increase which had been authorized on interstate traffic by the Interstate Commerce Commission. It did, however, authorize 20 per cent increases in the Docket 13494 class rates and prescribed a new scale of rates, to be substituted for the interim Docket 28300 rates, this latter scale being adjusted so as to reflect a 22½ per cent increase under Ex Parte 162, and then a 20 per cent increase under Ex Parte 166. Florida Railroad and Public Utilities Order 1466 (C) is reproduced as Appendix 3 in the petition of the Florida railroads which resulted in this investigation being instituted.

I would like to show here the effect of the Docket 13494 revision on the intrastate Florida rates, and call attention to pages D-1, D-2, and D-3 of Section D of my exhibit. This shows the rates on Classes 1 through 6 and Classes A, B, C, and D in the adjustment in effect just prior to the Docket 13494 revision, and on Classes 1 through 10 in the Docket 13494 revision, for representative distances. For convenient comparison, all the rates have been made to include the increase of 10 per cent under Ex Parte 123. There are also shown the rates which became effective when the Florida

arbitrary was waived on Classes 7 and higher and the rates which were effective when the change was made for distances 190 miles and under. There is also shown the percentage which the rates, with the last change indicated, bear to the rates which were in effect just prior to the Docket 13494 revision. It will be noted that, in almost every in- [fol. 939] stance, the rates which became effective July 7, 1941, were less than the rates which were in effect on January 31, 1929, as compared by the same standard, that being to subject the 1929 rates to the 10 per cent increase which had been made effective in 1938. The rates on these pages are for representative miles only. There are 14 mileage blocks shown, and ten classes, which makes a total of 140 instances for comparison of the 1941 with the 1929 rates. In only seven of those instances are the rates as of July 7, 1941, the same as or higher than those which were in effect January 31, 1929. Averaging the first and the sixth class rates for the 14 mileage blocks shown, it is found that the first class rates as of July 7, 1941, are 95.1 per cent of the first class rates as of January 31, 1929, the latter increased under Ex Parte 123, and that the sixth class rates as of July 7, 1941, are only 70 per cent of the sixth class rates as in effect January 31, 1929, and increased 10 per cent under Ex Parte 123. The rates in effect on July 7, 1941, are the same as those in effect June 30, 1946, and are the present basic rates, that is, the rates against which the increases authorized under Ex Parte 162 and 166, or their Florida counterparts, are figured as to the Docket 13494 rates.

On pages D-4 through D-7 of Section D, I have outlined the underlying basis for the class rates, both the Docket 13494 and the Docket 28300 rates, between the several sections of Florida. The state is, at present, divided into three parts, or rather two parts with a subdivision of one of the parts, for the purpose of applying the class rates. On page D-5 I have shown the underlying basis for the class rates between points in north Florida. This covers the territory on and north of the Seaboard Air Line Railroad from Jacksonville to Chattahoochee, and all points west of the Apalachicola Northern Railroad. The basic class rates in this part of Florida do not differ from those applicable interstate between the states just north of Florida or between

points in north Florida, on the one hand, and states just [fol. 940] north of Florida, on the other hand.

Page D-6 shows the underlying basis for the class rates between points in the Florida peninsula, that is, points south of the Seaboard Air Line Railroad from Jacksonville to Chattahoochee. It also shows the underlying basis for Classes 35-R or 35-V or higher between points in the Florida peninsula, on the one hand, and points north thereof, but east of Chattahoochee, including Chattahoochee, on the other hand. This is the territory in which the Florida arbitraries are included, except as they have been waived in connection with the Docket 13494 system of rates on Classes 35-R or 35-V and higher.

Page D-7 sets forth the underlying basis for the class rates between points in the Florida peninsula, on the one hand, and points west of Chattahoochee, including points on the Apalachicola Northern Railroad, on the other hand. It also sets forth the underlying basis for classes lower than Class 35-R or Class 35-V between the Florida peninsula points and points in north Florida, Chattahoochee and east. The Florida arbitraries are not waived on any of this traffic.

Pages D-8 to D-12, inclusive, compare Classes 1, 4, 7, 8, 10 and 12, as representative, for distances 500 miles and under, under the Docket 13494 adjustment for application intrastate between points in Florida in the section known as north Florida, i. e., on or north of the Jacksonville-Chattahoochee line and west of Chattahoochee, with the interstate rates applicable in that section. The rates here shown include the increases authorized on Florida intrastate traffic, and those through Ex Parte 166 authorized on interstate traffic. The only difference between the intrastate rates and the interstate rates here shown is that on Florida intrastate traffic the increase authorized under Ex Parte 166 (FR& PUC Docket 1574) is 20 per cent, while the increase authorized under Ex Parte 166 on interstate traffic is 25 per cent; [fol. 941] and, of course, since the 20 per cent increase authorized on Florida intrastate traffic is applied against total charge instead of against the rate, the fraction is held in making such increase, whereas on interstate traffic the increase is applied against the rate and the fraction disposed of to the nearest whole figure. The line of rates shown opposite Note B, i.e., the interstate level, is what we are

asking the Interstate Commerce Commission to prescribe for application in Florida under these proceedings. Incidentally, in this section of my exhibit dealing with class rates I have not shown the rates for distances above 500 miles. The maximum distance for Florida intrastate traffic is that from Century, Fla., just north of Pensacola, to Homestead, Fla., just south of Miami, the short or class rate distance being 749 miles. We are, of course, asking for the full Ex Parte 162-166 increases in connection with all rates in Florida. The omission of class rates above 500 miles or for distances above that in connection with other sections of the exhibit has been solely to conserve time and paper in the belief that the showing for the distances used in the exhibit is sufficiently representative.

On pages D-13 through D-17 of Section D, there are shown the Docket 13494 class rates as applicable from, to and between points in the Florida peninsula on Classes 1, 4, 7, 8, 10 and 12, as being wholly representative. The rates opposite Note A are those which are applicable today within south Florida or between points in south Florida, on the one hand, and points in north Florida, Chattachoochee and east thereof, on the other hand, as to Classes 1, 4, and 7; while the rates shown for Classes 8, 10 and 12 are applicable between the Florida peninsula points only. The Classes 8, 10, and 12 rates are also representative of the rates between south Florida points, on the one hand, and points in either north Florida or west Florida, on the other hand, except that the Florida peninsula arbitraries are not applied for the through distance, but only for that portion of the distance which is in the Florida peninsula. The rates opposite Note A include the increases authorized by Florida Railroad & [fol. 942] Public Utilities Commission in its Dockets 1538 and 1574, corresponding to Ex Parte 162-166. The figures shown opposite Note B indicate the rates we are asking the Interstate Commerce Commission to prescribe in this proceeding, and represent the full measure of the Ex Parte 162-166 increases. The difference between the rates shown in Note A and Note B is that the former include only 20 per cent increase under Ex Parte 166, while the latter include 25 per cent increase under Ex Parte 166.

Pages D-18, D-19, and D-20 of Section D set forth the Docket 28300 interim adjustment as applied to movement

between points in the Florida peninsula, on Classes 1, 4, and 7, which are fully representative of the other classes. The Column A rates show the adjustment as published voluntarily by the carriers, effective at the same time the interim Docket 28300 adjustment was put into effect on interstate traffic, and increased by 20 per cent as authorized under FR&PUC Order 1443, Docket 1538, and further increased by 10¼ per cent under FR&PUC Order No. 1466 (A) in Docket No. 1574. On interstate traffic, the Docket 28300 decision required, for the interim adjustment, that the interstate class rates within southern territory be reduced by 10 per cent, subject to the ultimate or Appendix 10 scale as minimum, except that the use of the Appendix 10 scale as minimum should not serve to increase the then present rates. On Florida intrastate traffic, the Florida carriers had, in connection with the Docket 13494 adjustment, waived the Florida peninsula arbitraries on Classes 1 through 7, as a truck competitive measure. In publishing the interim Docket 28300 adjustment on Florida intrastate traffic, the 10 per cent reduction was made in the full Docket 13494 rates, that is, those rates with the arbitraries included. In other words, the published interim Docket 28300 rates on intrastate traffic were made the same as those which were published between the same points on interstate traffic. There was nothing in the Docket 28300 decision which either heightened or lessened the truck competition which had forced the carriers to waive the Florida arbitraries on intra- [fol. 943] state traffic in connection with the Docket 13494 adjustment. The carriers, therefore, did not feel that there was anything contained in the Docket 28300 interim decision, nor any competitive adjustment set up thereby, which required the waiving of the Florida peninsula arbitraries in connection with the interim Docket 28300 adjustment as published for intrastate Florida application. However, because the south Florida arbitraries are 15 per cent of the Docket 13494 K-2 scale for the short line distances in south Florida, while the reduction in the Docket 13494 rates, including the arbitrary was only 10 per cent, the rates on commodities for which the rating is obtained from the straight Southern Classification without use of the Exceptions, would have become higher than they had been prior to the interim Docket 28300 revision within the Florida penin-

sula, unless we had observed as maximum the Docket 13494 rates, waiving the Florida arbitrary in connection with the interim Docket 28300 adjustment. For example, the first class rate within the south Florida peninsula from Jacksonville to Tampa, short line distance 205 miles, was, as of June 30, 1946, $1.31 per 100 pounds, if the Florida arbitrary be included, and $1.14 per 100 pounds if the Florida arbitrary be waived. We had, in connection with the Docket 13494 adjustment, waived the Florida arbitrary on first class freight and, therefore, the going rate was $1.14 per 100 pounds. 10 per cent off of the rate, including the arbitrary, would have produced $1.18 per 100 pounds. There was no underlying reason for increasing the rate on commodities where the rating is obtained from the straight Southern Classification on Florida intrastate traffic, by reason of the Docket 28300 decision, even if the Florida Commission's approval had been sought and obtained to make such increase. Therefore, the interim Docket 28300 rates as published for application between points in south Florida, and which represented 10 per-cent reduction from the Docket 13494 rates, including the Florida arbitraries, were made to alternate with the full Docket 13494 class rates as stripped of the Florida arbitrarires, but not further reduced. The [fol. 944] rates shown under Column A on pages D-19 and D-20 are, therefore, the Docket 13494 rates, as modified for distances 190 miles and under, without the Florida arbitrary, and increased 20 per cent under FR&PUC Docket 1443 and further increased 10¼ per cent under its Order 1466 (A).

Between points in north Florida on the one hand and points in south Florida on the other hand, the situation with respect to publishing the interim Docket 28300 rates to alternate with the Docket 13494 scale, waiving the Florida arbitraries on Classes 1 through 7 was often but not always the same as between Florida peninsula points. For example, from Tallahassee to Tampa, 253 miles, the first class rate including the arbitrary as of June 30, 1946, was $1.44 per 100 pounds, and a reduction of 10 per cent in that rate results in rate of $1.30 per 100 pounds, while the first class rate as of that date, without the Florida arbitrary was $1.25 per 100 pounds. On the other hand, from Tallahassee to

St. Augustine, distance of 293 miles, the first class rate, including the Florida arbitrary, as of June 30, 1946, was $1.23 per 100 pounds, and that figure reduced by 10 per cent, resulting in $1.11, is lower than the first class Docket 13494 rate $1.14, which did not include the Florida arbitrary. The alternation of the Docket 13494 rates as modified for distances 190 miles and under, waiving the Florida arbitrary, was, therefore, alternated with the interim Docket 28300 rates on traffic between points in north Florida on the one hand and points in the Florida peninsula on the other hand. I have not attempted, in this exhibit, to illustrate this situation as between north Florida on the one hand and south Florida on the other hand, as with the explanation just given, it is felt that what is shown for the Florida peninsula will be sufficiently illustrative.

The Florida Commission, in its final decision, in its Docket 1574, by its Order 1466 (C), set up for the interim Docket 28300 adjustment a new scale of rates apparently made by deducting 10 per cent from the Docket 13494 rates as in effect within Florida (and this includes the elimination of the Florida arbitrary on Classes 1 through 7) and [fol. 945] increasing the rates so arrived at by 22½ per cent, which is the same amount of the increase the Interstate Commerce Commission granted in connection with the interstate Docket 28300 interim adjustment. The Florida Commission then, in the same order, authorized an increase of 20 per cent in lieu of the 25 per cent increase obtained under Ex Parte 166 on interstate traffic. The rates on Classes 1, 4 and 7, between points in the Florida peninsula as prescribed in FR&PUC Order 1466 (C) are shown under Column B on pages D-19 and D-20 of this section of the exhibit. I ask that comparison be made as between the Column A rates which were in effect just prior to the order (1466 (C)), as shown in Column A, and those which resulted from that order as shown in Column B. These rates are very nearly identical, the average for the first class rates shown under Column A being 135.75 cents and those under Column B 137.33 cents.

In Column C, on pages D-19 and D-20, there are shown what the rates would be by reducing the normal class rates, which include the Florida peninsula arbitrary, by 10 per cent, and then increasing by 22½ per cent under Ex Parte

162 and 25 per cent under Ex Parte 166. The figures under Column D show the Docket 13494 class rates; as modified for distances 190 miles and less, without the Florida arbitrary, as increased 20 per cent under Ex Parte 162 and 25 per cent under Ex Parte 166.

While the Interstate Commerce Commission authorized 22½ per cent increase under Ex Parte 162 in connection with the interim Docket 28300 adjustment, and the Florida Commission did likewise, at least as to north Florida, only 20 per cent was allowed under Ex Parte 162 in the class rates under the Docket 13494 adjustment, and, therefore, in connection with the Column D rates we have used only the 20 per cent increase under Ex Parte 162.

It is the Column C rates, to alternate with the Column D rates, that we are seeking to have the Interstate Commerce Commission to prescribe in this proceeding, for application between points in south Florida on Classes 1 through 7, in connection with the interim Docket 28300 proceeding.

[fol. 946] Pages D-21, D-22, and D-23 of Section D is an attempt to set forth the interim Docket 28300 adjustment as it affects the entire state of Florida, expressed in rates as of June 30, 1946, or what are usually termed basic rates. The Column A rates shown on pages D-22 and D-23 are those which were published on intrastate traffic for application in north Florida or between states north of Florida, in compliance with the decision in Docket 28300 as to the interim adjustment. These rates are the Docket 13494 K-2 scale rates, modified for distances up to 190 miles, as increased 10 per cent under Ex Parte 123, and reduced 10 per cent; observing as minimum the ultimate or Appendix 10 Docket 28300 scale, except that use of that scale as minimum was not employed to increase any rates. There are no Florida arbitraries in the rates shown under Column A.

Under Column B there are shown the Docket 13494 Appendix K-2 scale rates, as modified for distances 190 miles and less, and increased 10 per cent under Ex Parte 123. They are the rates which were applicable in north Florida, and interstate in the states just north thereof, as of June 30, 1946. The rates under Column C are the equivalent of the rates which were prescribed for the interim Docket 28300

adjustment by FR&PUC Order 1466 (C), worked back to the June 30, 1946 level. The scale which was prescribed by the Florida Commission included what was intended to be a 22½ per cent increase under Ex Parte 162, to which was to be added the further 20 per cent allowed by the Florida Commission in Ex Parte 166. In order to arrive at first class rates which were the equivalent of the June 30, 1946 level under the rates prescribed by the Florida Commission it has been necessary to show halves in order that by applying the 22½ per cent increase we will reach the same figure as is shown in Appendix A of Florida Commission's Order 1466 (C) as reproduced in Appendix A of the petition in this Docket No. 30140.

Under Column D on pages D-22 and D-23 for the first class rates, there have been included the arbitraries which [fol. 947] are the June 30, 1946 level of the arbitraries shown in Appendix C of Florida Commission's Order 1466 (C) and which is reproduced on page 72 of the petition in this Docket, No. 30140. The Column D first class rates as shown are not for use in connection with any rates on Classes 1 to 7, inclusive, in Florida, the Column C rates being used for those classes under the Docket 28300 interim adjustment. The Column D rates under first class are for use in arriving at the rates on Classes 8 to 12, inclusive, for application between points in the Florida peninsula.

The rates shown under Column C for Classes 1, 4 and 7 are the June 30, 1946 level for the present interim Docket 28300 rates throughout Florida. The Column D rates for Classes 8, 10 and 12 are the interim Docket 28300 rates for application within the Florida peninsula.

Incidentally, I would call attention to the fact that the Column C rates are almost always 10 per cent less than the Column B rates for first class, and, above 85 miles, are usually within one-half cent of the interim rates which were published interstate north of Florida and as shown in Column A. The Column C rates are considerably lower than Column A for distances less than 85 miles, because the Florida Commission, in working out its adjusted interim Docket 28300 scale did not observe the ultimate or Appendix 10 Docket 28300 scale as minimum.

Q. Do you have any further comment to make as to the class rate situation in Florida?

A. No, Sir, other than to mention the fact that the class rates in all territories east of the Rocky Mountains are due to undergo more or less radical change as result of the decision of the Interstate Commerce Commission in ICC Dockets 28300 and 28310, the latter being the decision requiring the railroads to adopt a uniform classification, in connection with which uniform class rates for all the territories east of the Rocky Mountains are to be applied. A great deal of study and labor has been given to the prepara-
[fol. 948] tion of a uniform classification, public hearings having been held on four separate dockets covering all commodities. It is not known when the uniform classification and the ultimate Docket 28300 rates will be put into effect, but until they are, the class rates in Florida should be treated as they have interstate throughout the country, that is, the rates as in effect June 30, 1946, and as subjected to the interim Docket 28300 class rate decision, should be increased by the full amount obtained interstate under Ex Parte 162 and 166.

Q. Will your next eight or ten sections of your exhibit deal with the Florida intrastate rates on various commodities?

A. Sections E through O illustrate the rates on various commodities moving in considerable volume, in carload lots, between points in Florida.

Q. Will you please take up these sections of your exhibit, one by one, and briefly explain them?

A. Section E of my exhibit pertains to rates on lumber and related articles. Before taking up that section of the exhibit, I would like to mention briefly the history of the southern lumber rates and the present status of the rates on lumber within Florida.

Prior to 1940, the rates on lumber between southern points were on no consistent basis for interstate traffic, except between points in the Carolinas and from most of southern territory to the Carolinas. The intrastate rates in each state were those which had been prescribed by the state commissions, and those in Florida intrastate were the lowest applicable within any of the southeastern states.

The intrastate rates on lumber within Florida, at that time, represented what had been prescribed by the Florida Commission in 1914 as result of extended litigation in the court and a compromise of that litigation.

The first attempt to revise the interstate rates on lumber within any considerable section of the South to be on a consistent level was made in 1926 to cover the rates within the Carolinas and from Tennessee, Mississippi, Alabama, [fol. 949] and Georgia to the Carolinas. The rates then published were suspended in I&S Docket 2479, which was heard along with ICC Docket 16383, Adams-Bank Lumber Company, et al. v. A&R RR Co., et al., decided September 23, 1929, and reported at 157 ICC 280. The Commission there approved the suspended rates which, between the Carolinas, had been made by use of a mileage scale that came to be known as the I&S Docket 2479 scale. In the ten years following the decision in I&S Docket 2479, the Commission had before it a number of cases involving lumber or articles which generally take lumber rates such as box and crate materials, poles and piling or cross ties, between various points in the southeastern part of the territory, and therein found that rates made on the I&S Docket 2479 scale would be the reasonable rates. Citation of these decisions will be given later on. One of them was Docket 26197, Georgia Veneer and Package Company v. Georgia Railroad, decided February 14, 1935, reported 206 ICC 566. In that case shippers at Brunswick and Savannah, Ga. attacked the rates on box and crate material from Brunswick and Savannah to certain destinations in the Florida peninsula as being in violation of Section 1, and as preferential to Bainbridge under Section 3 and to Tallahassee, Fla., under Section 13 of the Act. In its decision, the Commission cited 12 cases in which it recognized the Adams-Bank (I&S 2479) scale as a standard of reasonableness on lumber and allied products within the South, and required removal of the undue prejudice, finding that the maximum reasonable rates from Brunswick, Savannah and Bainbridge, Ga., and Tallahassee, Fla., to Florida destinations on the Florida East Coast, Titusville, and Okeechobee, Fla., and south, and to destinations on the Seaboard, Okeechobee, Fla., and south would be the I&S Docket 2479 scale.

Southern roads had, in the years following the decision in I&S Docket 2479, given a great deal of attention to the matter of revising the lumber rates within the entire South so as to be on a more nearly uniform and consistent basis. Revised lumber rates within southern territory were published and scheduled to become effective November 17, 1937; the basis for such revision in that portion of southern territory south of Virginia and Kentucky and east of Missis- {fol. 950} sippi and west Tennessee being the I&S Docket 2479 scale, modified for distances up to 150 miles to meet truck competition, and graded into the I&S Docket 2479 scale at about 250 miles. That publication was suspended in I&S Docket 4432. There followed numerous conferences between representatives of lumber shippers and representatives of southern carriers which resulted in a compromise, and with the Interstate Commerce Commission's authority the rates which were under suspension in I&S Docket 4432 were withdrawn on January 2, 1940. The compromise scale, which came to be known as the southeastern lumber scale or the southern compromise lumber scale was then used as the basis for a general revision of interstate rates on lumber within the territory south of Virginia and Kentucky and east of Mississippi and the western portion of Tennessee, including the Florida peninsula. No arbitraries were added for the south Florida haul. That basis became effective June 17, 1940.

The southern compromise scale is lower than the original I&S Docket 2479 scale for distances 400 miles and less, and the same as the original I&S Docket 2479 scale for distances above 420 miles. By the original I&S Docket 2479 scale, I mean the I&S Docket 2479 scale without the Ex Parte 123 increase. The rates for distances 200 miles and under were adjusted with view to meeting truck competition, and from 200 to 400 miles graduated into the original I&S Docket 2479 scale.

One of the features of the compromise was that the lumber shippers would support the efforts of the railroads in their efforts before the state commissions, excluding, however, Florida, to obtain authority to apply the southern compromise lumber scale on intrastate traffic. Authority was obtained from the state commissions in North Carolina, South

Carolina, Georgia, Alabama, and Mississippi to apply the southern compromise lumber scale on intrastate traffic in those states, within relatively short time after the revision was made effective on interstate traffic. Application was filed with the Florida Commission at the same time it was filed with the other southern state commissions for authority [fol. 951] to make this revision. The Florida Commission held hearings at Jacksonville, Miami, Tampa and Tallahassee during the period March 3rd through July 19, 1941. Its decision was not given until August 5, 1942, when, in its Order 1356, it required establishment of two lines of rates, one subject to minimum weight of 34,000 pounds, the other subject to minimum weight of 24,000 pounds. The rates so prescribed as subject to minimum weight of 24,000 pounds very closely approximate the southern compromise scale, which is subject to minimum weight of 34,000 pounds, except that on box and crate material the interstate minimum weight is 30,000 pounds. The Florida rates under Order 1356 which are subject to minimum weight of 34,000 pounds are slightly higher than the southern compromise scale at 10 miles, but above 35 miles are less than the southern compromise scale, the Florida rates getting progressively lower than the southern compromise scale as the distance increases.

The rates prescribed in Florida Commission's Order 1356 were made effective February 14, 1943. In the meantime, petition for reopening and further hearing had been filed, and while the rates had been made effective, the Florida Commission did reopen, and further hearing was had at Jacksonville on April 20-21, 1943. The Florida Commission took no action on the data presented at the further hearing until it released its Order 1489, dated May 5, 1948, which granted authority sought to establish the southern compromise scale on Florida intrastate traffic. Before we could publish the rates on that basis, the Florida Commission by its order of May 29, 1948, postponed the effective date and assigned the case for further hearing on June 24, 1948. That hearing date was postponed; later another one was set for October 18, 1948; that hearing date was then postponed until December 20, 1948, and later postponed indefinitely. In FR&PUC Order 1433, its Order in the Ex Parte

162 case, we received 20 per cent increase in the rates which had been prescribed in its Order 1356, and in its Order 1466 (C) the Ex Parte 166 case, we received a further increase of 20 per cent instead of the 25 per cent sought. In this [fol. 952] proceeding we are seeking only the last 5 per cent under the Ex Parte 166 decision. It would probably be well to mention here that while in the interstate increases in Ex Parte 162 and 166, maximum increases of 10 cents per 100 pounds and 20 cents per 100 pounds, respectively, were required to be observed on lumber and articles taking the lumber rates, there is no rate within the Florida peninsula so high as to bring these maxima into play. The highest basic rate applicable for intrastate movement in Florida—This would be from Century, Fla. to Homestead, Fla., 749 miles—is 30½ cents per 100 pounds at minimum weight of 34,000 pounds and 37½ cents per 100 pounds at minimum weight of 24,000 pounds.

In Section E of this exhibit there have been shown the two intrastate Florida scales, one at 34,000 pounds minimum, the other at 24,000 pounds minimum, the southern compromise scale, the I&S Docket 2479 scale and the rate level in Official territory. Each of the scales is shown at the basic rates, also as increased under Ex Parte 162 and as increased under Ex Parte 166, the rates for the Florida intrastate scale being subjected to those increases as authorized by the Florida Commission, the others being increased in accordance with the interstate increases.

I would call attention to line 11 at page E-3 of this section, which shows the comparison for distances 420 and over 400 miles. Perry, Fla. is a large producing point for lumber and Miami, Fla., is an important receiving point. The short line distance from Perry to Miami is 416 miles, which falls within the 420 and over 400 miles block. The basic rate, subject to minimum weight of 34,000 pounds, within Florida, at this distance, is 19 cents per 100 pounds. That under the southern compromise scale is 25½ cents per 100 pounds; that under the I&S Docket 2479 scale as increased 5 per cent under Ex Parte 123 would be 27 cents; the basic rate within Official territory at Class 25K would be 26 cents and at Class 22½ would be 25 cents. The I&S Docket 2479 scale is the one used by the Commission, for ten years prior to 1940, in

[fol. 953] arriving at prescribed rates on lumber and related articles from and to many sections of the South. In Note 3 on page E-4 of this section citations are given for a few of the instances where the Commission did use the I&S Docket 2479 scale as the measure for prescribing rates on lumber between various sections of the South.

The comparison made with Class 25K in Official territory is because, in I&S Docket 4035 and related cases, 215 ICC 493, the Interstate Commerce Commission found Class 25 to be reasonable on lumber and related articles between points in Official territory. The suffix "K" in connection with Class 25 denotes that the increase under Ex Parte 123 was 5 per cent instead of 10 per cent. Class 22½ as applicable within Official territory is shown in the comparisons because some time after the Commission had prescribed Class 25 within that territory the Official territory roads voluntarily reduced the rating to Class 22½ which, however, includes the 10 per cent increase under Ex Parte 123.

Page E-5 of Section E is a reproduction of a telegram dated April 8, 1943, from the Chairman of the Florida Commission to the Chairman of the Interstate Commerce Commission, inviting the Interstate Commerce Commission to participate in the hearing before the Florida Commission on April 20, 1943, in the reopened Florida lumber case. Commissioner Alldredge was present at that hearing. Particular attention is called to the indication in that telegram that the decision of the Florida Commission which resulted in the present intrastate rates was predicated upon cost studies entered by Dr. Edwards. The reference there is to the cost studies which had been entered by Dr. Edwards of the Commission's staff, at the first hearing in Docket 28300, and which purported to show the average cost of handling all box car traffic in southern territory including the state of Kentucky. As previously indicated, the Florida Commission has not, as yet, rendered its decision as result of the hearing in April, 1943.

I will now take up the rates on logs. As has been shown [fol. 954] in Section — of this exhibit, the Florida Commission authorized no increase in its Order 1443 in Docket 1538, the Ex Parte 162 case, on "logs moving to the mills." From a practical standpoint the qualifying phrase "moving to the

mills" could have been omitted, because there is no movement of logs of which I am aware to other than the mills. It could be and at times there have been movements of logs to the ports, for export, but the rates on such movements would be the interstate rates. In its Order 1466 (C) in Docket 1574, the Ex Parte 166 case, the Florida Commission granted 20 per cent increases in lieu of the 25 per cent which had been authorized on interstate movements. There was a maximum of 8 cents per 100 pounds increase under Ex Parte 162 on interstate traffic, but the rates on logs in Florida, even for the greatest distance, are too low for that maximum to ever come into play.

The adjustment on logs within the state of Florida is quite complicated. The maximum rates on any kind of native wood logs, other than cedar, in Florida, are the Class P-1 rates, per car of 30,000 pounds, excess in proportion. This is the rating shown in Florida Classification No. 11, Agent R. E. Boylo, Jr.'s ICC 79. The designation of Class P-1 indicates that the rates are those in effect just prior to Ex Parte 123, increased 5 per cent under Ex Parte 123. Both the Coast Line and Seaboard publish lower than the Class P-1 rates on certain kinds of logs, which will be set forth in Section F of my exhibit. The rates of the Coast Line applicable on logs over 6 ft. in length, except walnut, cherry, or cedar logs, minimum weight 40,000 pounds, for distances 170 miles and under are the present day equivalent of those which the Interstate Commerce Commission prescribed in its decision in ICC Docket 18364, Georgia Public Service Commission v. Atlantic Coast Line Railroad, reported 186 ICC 157, decided July 5, 1932. In Appendix F of the decision, the Interstate Commerce Commission set forth the minimum rates which might be applied by the Coast Line on logs over 6 ft. in length, excepting walnut, [fol. 955] cherry and cedar logs, for distances 170 miles and under. It will be seen by reference to Section B of my exhibit that, during the four weeks' test period the Coast Line and Seaboard each terminated a large amount of logs. There were no terminations of logs on the East Coast or L&N for the test period. I am, therefore, confining that portion of my exhibit pertaining to logs to the single line rates of the Coast Line and *and* Seaboard. Of the 218 cars

of logs terminated on the Coast Line during the four weeks' test period 191 originated with the Coast Line and 27 originated with the East Coast. Of the 79 cars terminated by the Seaboard during the four weeks' test period 59 originated with the Seaboard, 16 with the East Coast and four with the Coast Line. Where joint hauls are involved the basis for the rates in Florida is combination of the Class P-1 rates less deduction of 10 per cent from each factor where two hauls are involved or less 20 per cent from each factor where three line hauls are involved, unless combination of factors which might be lower can be used, such lower combination is observed as the rate. The largest movement of logs in joint line service, as noted during the four weeks test period was from Maytown, on the East Coast, to Nocatee, on the Seaboard, 15 cars with average weight of 41,340 pounds. The charges on that movement under the present Florida rates is $778.72, which reflects a rate of 12.56 cents per 100 pounds. Under the basis of rates sought by this proceeding, the charges on those 15 cars would amount to $942.35 which is at the rate of 15.2 cents per 100 pounds. The short line distance from Maytown to Nocatee, Fla. is 167 miles (FEC to Benson Junction, ACL to Arcadia, SAL beyond). The joint line Farris scale, prescribed from southern points to Nashville, Tenn., in Docket 22548, reported 178 ICC 671, subjected to increases authorized since that decision, other than the Ex Parte 168 increase, would produce rate of 20 cents per 100 pounds.

Probably the greater part of the logs which move in single line service pay initially the local rate on logs, and readjustment down to net transit rates which are lower than the local rates is made after proof of reshipment of [fol. 956] the products of the logs over the rails of the inbound carrier. For that reason, I have included in Section F of my exhibit both the local single line and the net transit single line rates on logs for the Coast Line and Seaboard. As a large portion of the outbound movement of the products of the inbound logs, and particularly where the outbound movement is of box and crate material, is to Florida destinations, I have shown the Florida intrastate increases under FR&PUC Orders 1443 and 1466 (C) in connection with the net transit rates.

Pages F-2 and F-3 show the basic rates of the Coast Line

within Florida. On pages F-4 and F-5, those rates have been designated as increased under Ex Parte 162, but there is no difference in the Florida rates under Ex Parte 162 and the basic rates. On pages F-6 and F-7, the Florida rates are shown as increased under Ex Parte 166, that is, under Order 1466 (C) of the Florida Commission. As compared with these rates in Florida, that is, the basic rates, as increased under Ex Parte 162, and as increased under Ex Parte 166, there have been shown for comparison three interstate scales. One of these scales, that under Column H, is the normal interstate scale published by the Coast Line, Seaboard and Southern, which is subject to minimum weight of 40,000 pounds. That scale is the same as the scale prescribed by the Interstate Commerce Commission in Docket 17043, 120 ICC 190, from Coast Line stations in South Carolina to Savannah, Ga., as increased 10 per cent under Ex Parte 123, and subject to the later increases under Ex Parte 162 and 166. For distances 170 miles and under, this scale without the Ex Parte 123 and subsequent general increases is the same as that prescribed as minimum rates by the Interstate Commerce Commission in Docket 18364, 186 ICC 157, for single line movements of logs over 6 ft. in length via the Coast Line for hauls 170 miles and less within Florida.

Comparison is also made with the single line Farris scale rates, which are subject to minimum weight of 40,000 pounds. The Farris scale was prescribed by the Interstate Commerce Commission in Docket 22548, 178 ICC 671, from various points in southern territory to Nashville, Tenn. The [fol. 957] Farris scale for joint line hauls is higher by $2\frac{1}{2}$ cents per 100 pounds, prior to Ex Parte 123, than the Farris single line scale. The Interstate Commerce Commission has, in many proceedings involving joint line rates on logs between southern points, prescribed the joint line Farris scale. Reference is made here to the Pulaski Veneer Corporation case, 258 ICC 706, and the several cases cited therein where the Farris joint line scale has been prescribed.

Comparison is also made with the rates generally applicable on native wood logs, minimum weight 36,000 pounds, applicable within Official territory, that being 18 per cent of first class. In this connection, reference is made to comment of the Interstate Commerce Commission in

Docket 23120, reported 251 ICC 239, as to 18 per cent of first class being applicable generally on logs within Official territory.

Pages F-9 and F-10 of Section F of my exhibit show the present mileage scale rates on logs of the Seaboard Air Line Railroad within Florida, and also specific rates on logs from representative points on the Seaboard to Jacksonville and Fernandina, Fla. The Seaboard's scale on ash, gum, hickory, pine and cypress logs not over 6 ft. in length, is the same as that of the Coast Line. It publishes some lower rates on logs for distances up to 150 miles, which are expressed in units of cents per car of 3,500 feet or per 1,000 feet, board measurement. It is rather difficult to restate these per thousand feet or per car of 3,500 feet rates on a per 100 pounds basis, but that has been done using estimated weight of 12,000 pounds per thousand feet, which is published for use, when actual measurement is not obtained, in Supplement 13 to Florida Classification 11, Agent R. E. Boyle, Jr's. ICC No. 79, on pine, oak, gum, ash and magnolia logs. The published estimated weights on other varieties of logs for use only where actual weights are not obtained run from a low of 9,000 pounds per 1,000 feet on poplar to a high of 14,000 pounds per 1,000 feet on hickory. The average weight per [fol. 958] thousand feet, board measurement, of logs will differ greatly, according to the thickness of the logs and whether or not grown in swampy lands or well drained lands. 12,000 pounds per thousand feet is as low as should be used as an estimated weight on pine and gum logs, which are the species of logs generally moving in Florida. Tests have been made at a number of points in southern territory which, while not conclusive, show that a higher average weight per thousand feet would be more nearly in keeping with the facts, though the tests which were made were not altogether conclusive. As an instance, the Southern Weighing and Inspection Bureau measured 365 cars of pine logs which moved during a period of approximately 13½ months ending with June 7, 1940, from Alabama points to an Alabama destination, actual weights having been obtained on each car. It was found there that the average weight per thousand feet under the Doyle-Scribner Rule for those 365 cars was 26,758 pounds. Only one or two

cars out of the 365 figured out to weigh less than 12,000 pounds per thousand feet, the lowest weight in a car figuring to be 11,480 pounds per thousand feet.

It is seen that the rates of the Seaboard on the thousand feet basis, using 12,000 pounds per 1,000 feet, are slightly higher than its general line of rates on ash, gum, hickory, pine and cypress logs not over 6 ft. in length, but if the weight per 1,000 feet is as much as 13,000 pounds, the per 1,000 feet rates are lower. The Seaboard's rates on ash, gum, hickory, pine and cypress logs, not exceeding 6 ft. in length, are the same as or less than the interstate scale published and maintained by the Coast Line, Seaboard and Southern, as may be ascertained by comparing Column H with Column A on pages F-2 and F-3 of this section of my exhibit.

Pages F-11 and F-12 of this section of my exhibit, show the net transit scales on logs published by the Coast Line and Seaboard, for application intrastate in Florida, also for application interstate. The scales are published as such for distances 125 miles and under, but are not published as scale rates for distances beyond that. Specific [fol. 959] point to point rates have, however, been made by using the scale extended as shown in this exhibit for distances beyond 125 miles to approximately 275 miles. The Coast Line's transit log mileage scale is published in cents per 100 pounds, and subject to a minimum weight of 60,000 pounds. The Seaboard's transit log scale is published per car 80,000 pounds, excess in proportion. Generally, the transit scale of the Seaboard, at 80,000 pounds is lower than the Coast Line's transit scale applied to a weight of 80,000 pounds, but, on the other hand, the per car charge on Coast Line's transit scale at minimum weight of 60,000 pounds is usually lower than the Seaboard's per car charge for 80,000 pounds. A large proportion of the Coast Line's gondola cars are of the low side variety, and not much more than 60,000 pounds of logs can be loaded into this kind of equipment. It is for that reason that the Coast Line maintains the scale subject to a minimum of 60,000 pounds as its standard net transit log scale. In instances where there is a steady movement of logs and we can find high side gondolas for such movement, we have generally published alternating net transit rates, using the Seaboard's scale

at 80,000 pounds to alternate with our normal scale at minimum weight of 60,000 pounds, and the Seaboard often alternates the two scales.

I do not find where the Interstate Commerce Commission has passed on the reasonableness of either of these net transit log scales, but it did refer to the Seaboard's net transit scale in its report in the 13th section case against rates on logs via the Coast Line in Florida, 186 ICC at page 163. On page F-13 I have shown comparison of the per car revenue under the transit scales at the minimum weights, compared with per car revenue at various weights on four low rated commodities, namely, sand and gravel, roadway cold patch material, crude phosphate rock and common brick. The per car revenue, even at 80,000 pounds, under the net transit log scales, is seen to be very much lower than the per car earnings on the other commodities with which compared. All of these other commodities, like logs, move to a large extent in open top or gondola equip-
[fol. 960] ment. Incidentally, as indicated on pages B-10 and B-50, Section B of my exhibit, the average loading for logs terminated by the Coast Line during the test period (this does not include movement under three special train load rates) was 57,535 pounds per car, and that for the Seaboard was 46,319 pounds per car.

On pages F-15 through F-19, I have compared the net transit rates of the Coast Line and of the Seaboard, as mileage scales, with the local mileage scale rates on logs. This is simply to show that the net transit rates are lower than the local or open mileage scale rates on logs.

On pages F-20 through F-25 of Section F, there have been shown representative point to point net transit rates on logs, where the distances are above 125 miles, as published by the Coast Line and the Seaboard. For both the Seaboard and the Coast Line the net transit rates are shown on an alternating basis, the higher rate being subject to minimum weight of 60,000 pounds and the lower rate being subject to minimum weight of 80,000 pounds. These are the net transit scales of the Coast Line and Seaboard, respectively, as extended for distances beyond 125 miles. The net transit rates shown are here compared with the local mileage scale rates on logs, the net transit rates always being lower than the local mileage scale rates. On pages

F-26 through F-29 I have indicated the special rates published by the Coast Line on logs, when in train load lots, from Copeland to Perry, from Walling to Lacoochee, Fla., and from points on the southern end of the Coast Line's Everglades Branch to Lacoochee, Fla. It will be noted that these train load rates are graduated, in accordance with the number of train loads shipped per calendar month, the lowest per car rate being when nine or more train loads per month are shipped. These rates are compared with the Coast Line's net transit scale at minimum charge of 60,000 pounds. It will be noted that in all cases the train load rates are materially lower than the normal net transit rates.

[fol. 961] Another witness has taken the burden of showing the rate situation in Florida as to pulpwood, but the movements and rates on pulpwood are of such importance to the Coast Line that I desire to supplement what he will have to say with regard to this commodity.

Within Florida, the normal rates on pulpwood are 1/10 of Class P per cord of 128 cubic feet. This basis was prescribed by the Florida Commission after full hearing in its Docket 1085, Order No. 1036, of May 28, 1931. That rating is now published in Florida Classification No. 11, Agent R. E. Boyle, Jr's. ICC 79. There has been applied within most sections of the South, certainly to the paper mill plants in Virginia, North Carolina, South Carolina, Georgia and Florida, commodity rates for single line hauls which are made on what is known as the "Roanoke Rapids" scale. Some roads publish such rates as a mileage scale, but the Coast Line has never published such rates except as specific point to point commodity rates for single line hauls. The Roanoke Rapids scale was originally the same interstate and intrastate, wherever it was published, but since the Ex Parte 123 increase, the intrastate rates voluntarily established on the Roanoke Rapids scale have not received in all instances the same increases as have been made on interstate traffic, nor have the increases as obtained in the several states been uniform. When I speak of the Roanoke Rapids scale, it should be understood as meaning that scale as just prior to Ex Parte 123 with such increases as have been authorized on interstate or intrastate traffic since that time.

The Coast Line has at no time voluntarily established rates on basis of the Roanoke Rapids scale except with the implicit understanding that it would receive outbound tonnage of the product from processing the pulpwood equivalent to the ratio of the product obtained from the amount of pulpwood brought in by the Coast Line. In some instances, the rates so published by the Coast Line have not been made subject to specific transit rules, but a great many [fol. 962] of our pulpwood rates voluntary established on the Roanoke Rapids scale are subject to specific transit rules and regulations. Reference is here made to Section 3 of Coast Line's Wood Tariff, Freight Tariff 91-30-I, ICC B-3168, which publishes 13 pages of rates made on the Roanoke Rapids scale which are subject to specific transit rules and regulations. Within Georgia, the Georgia Commission required establishment of rates on a scale which is practically the same as the Roanoke Rapids scale, the usual variation therefrom being from one-half cent to one cent per cord, as open single line scale rates, and the North Carolina Utilities Commission has likewise recently required the Roanoke Rapids scale to be published as open rates on intrastate traffic. The Coast Line and Seaboard have pending in the North Carolina Courts an appeal against the rates required in that state. The Florida Commission, in its decision of April 23, 1948, Order 1488 in Docket 1598, required the Coast Line to establish the Roanoke Rapids scale as an open scale from Florida points on that road to Palatka, Fla. The increases reflected in the original Roanoke Rapids scale as prescribed from Coast Line origins to Palatka was 10 per cent under Ex Parte 123, 9 per cent under Ex Parte 162 and 20 per cent under Ex Parte 166, or rather under the Florida counterpart of those Ex Parte decisions. The Coast Line petitioned the Florida Commission for reconsideration on July 6, 1948, but that petition was denied by Order 1526 in Docket 1598 of December 30, 1948. The Coast Line has filed, or will file shortly, suit in Federal District Court, seeking to have it set aside Florida Commission's Order 1488, on the ground of confiscation.

I will attempt to show, by Section G of my exhibit, the exceedingly low level of the Roanoke Rapids scale and of the classification basis of 1/10 of Class P in Florida on

pulpwood. On page G-2 there are shown the basic rates, that is, of June 30, 1946, under the 1/10 of Class P Florida intrastate rates, under the Roanoke Rapids scale, and under the so-called "Bailey Scale" which has been adopted [fol. 963] rather generally as the basis for rates on pulpwood in eastern trunk line territory, and have shown average car revenues obtained from these three pulpwood scales. Compared therewith, there are shown the rates and the average per car revenues on sand, gravel, etc., under the basic southern scale as applicable north of the Florida peninsula on those commodities. I have already explained what is meant by the Roanoke Rapids scale and how the 1/10 of Class P comes into the picture on Florida intrastate traffic. In eastern territory the "Bailey" scale has generally been used within what is known as "eastern trunk line territory" since about the first part of 1943 in the establishment of rates on pulpwood to paper mill plants. It is materially lower than the rates which were, prior to that time, generally applicable within Official territory. It will be noted that the rates under the "Bailey" scale are stated in cents per 100 pounds, while the Florida intrastate rates are in cents per cord. The pulpwood obtained in the South will weigh more per cord than that in the East. Within Florida the weight will usually run something over 5,000 pounds per cord of 128 cubic feet, but as the Coast Line in its Wood Tariff publishes an estimated weight of 5,000 pounds per cord, I have observed that weight in making my calculations. When Mr. Bailey, then Traffic Manager of the West Virginia Pulp and Paper Company, submitted the Bailey scale to the eastern roads for consideration, he advised that pulpwood which would move on that scale would weigh approximately 4,400 pounds per cord. In statement made by Mr. Wilbur LaRoe, representing the paper industry in Ex Parte 166, he indicated that the rates on woodpulp in Official territory were designed to apply on wood weighing 3,300 pounds per cord. The difference between those weights reflects the difference between peeled dry pulpwood and the pulpwood with the bark on which is more or less green. However, using the lower of those weights, that is, 3,300 pounds per cord, in connection with the Bailey scale, that scale produces a higher per cord

[fol. 964] rate than does the Roanoke Rapids scale. Beginning at line 8 on page G-2 it will be noted under the Bailey scale that a rate of 5 cents per 100 pounds, basic, is applicable for distances 80 miles and over 40 miles. At 3,300 pounds per cord that would produce a rate of $1.65 per cord, whereas the Roanoke Rapids scale runs from $1.24 to $1.56 per cord for those distances. At lines 20 and 21 on page G-2, it is seen that basic rate of 7 cents per 100 pounds applies under the Bailey scale for distances 160 miles and over 140 miles. At 3,300 pounds per cord that is equivalent to rate of $2.31 per cord, whereas under the Roanoke Rapids scale the per cord rate is either $2.01 or $2.17.

On pages G-2 and G-3, average revenue per car under the Florida intrastate rates which are based 1/10 of Class P, also for the Roanoke Rapids scale rates, are shown, using for this purpose an average loading of 15.12 cords which is arrived at by taking the average loading of 37.80 tons for southern region in the year 1948, and using 5,000 pounds per cord to get at the average number of cords. The average revenue per cord under the Bailey scale is also shown on basis of using the average loading for pulpwood in the eastern district for 1948. Particular attention is called to the showing that the Roanoke Rapids scale produces very much lower per car revenue than does the Bailey scale. The average per car revenue under the Roanoke Rapids scale for distances shown on pages G-2 and G-3 is $42.13, that for the Bailey scale being $60.92. The Bailey scale produces revenue per car of approximately 44.6 per cent higher than does the Roanoke Rapids scale. Also, on pages G-2 and G-3 the average per car earnings on pulpwood are compared with the average per car earnings on sand, gravel and crushed stone, using average loading for southern region in connection with the basic scale of rates now applicable generally in southern territory north of the Florida [fol. 965] peninsula. The per car revenue on what is ordinarily considered to be the lowest rated traffic is seen to be nearly double that received under the Roanoke Rapids scale.

On page G-4 I have made comparisons of the basic rates under ICC Docket 14883 scale with the Bailey scale, the Coast Line's normal scale on pulpwood and the Roanoke Rapids scale. The ICC Docket 14883 scale is that which

was prescribed, 104 ICC 495, on pulpwood from points in Maryland, Virginia, West Virginia and the District of Columbia to various points in West Virginia, Maryland, Delaware and Pennsylvania. That decision is dated December 17, 1925, and the 10 per cent increase under Ex Parte 123 has been added to arrive at the basic level of the Docket 14883 scale. That scale was the one generally in use in eastern trunk line territory before the roads in that territory voluntarily adopted the Bailey scale. The Coast Line's normal scale on pulpwood is the one which would apply in interstate movements of pulpwood where the Coast Line is not assured of the outbound haul of the products of the pulpwood. The Coast Line handles a considerable quantity of pulpwood at rates on this normal pulpwood scale. During the year 1948 the Coast Line handled 1,966 cars of pulpwood from interstate origins on its line which moved to a destination reached only by the Seaboard, on which the Coast Line's normal scale of rates was applied for the haul up to the junction with the Seaboard.

The Roanoke Rapids scale as shown on page G-4 has been reduced to cents per 100 pounds, using an estimated weight of 5,000 pounds per car for this purpose. At various times, [fol. 966] tests have been made of the weights per cord of 128 cubic feet for movement of pulpwood to various plants in the South. Such a test was made during 1944, and for 501 cars the average weight was found to be 5,186 pounds. That test was made at 16 mills scattered from Franklin, Va., to Bogalusa, La. Movements to four mills in Florida were included, the average weights per cord of 128 cubic feet found to four Florida points varying from a low of 5,048 pounds to a high of 5,569 pounds.

At the bottom of page G-4, there is quoted an excerpt from decision of the Interstate Commerce Commission in I&S Docket 4631, reported 235 ICC 11, in which the Commission refers to the Roanoke Rapids scale as a depressed basis, and as being essentially a transit scale. The Coast Line now considers and it has always considered the Roanoke Rapids scale to be so low as to be non-compensatory, unless we can obtain the haul of the product manufactured from the pulpwood.

At page G-5, I have compared the rates (as increased 10% under Ex Parte 123) on pulpwood which, in I&S

Docket 3575, reported 178 ICC 509, the Commission found to be reasonable from Coast Line stations in Alabama to Dothan, Ala., when for Panama City, Fla., as compared with the Coast Line's normal pulpwood scale and with the Florida rates which are 1/10 of Class P. At the time that decision was given the Coast Line's normal pulpwood scale was the same as that found reasonable in I&S Docket 3575, except for the last two distances shown of 180 and 190 miles, where the Coast Line's normal scale was 9 and 9½ cents as against 8½ cents which the Commission found reasonable.

[fol. 967] In its decision in ICC Docket 16295, of July 19, 1926, reported 113 ICC 389, following investigation into the rates on fertilizer materials between southern points, the Commission therein prescribed a scale of rates, subject to minimum weight of 40,000 pounds, for application on interstate traffic throughout the South. That scale was made effective on both interstate and intrastate traffic within the South. It contained no arbitrary for the south Florida haul. This scale, the Docket 16295 scale, remained in effect without change, other than the increase under Ex Parte 123, as authorized by the Interstate Commerce Commission and the several state commissions, until September 9, 1939, when severe reductions were made for distances 300 miles and under, in order to meet truck competition which had become severe for the shorter distances, with graduated scale to merge with the 16295 scale, as increased under Ex Parte 123 at 471 miles. The trucks, mostly contract trucks, were found to be handling the mixed fertilizer from the manufacturing plants and delivering same to the farmers' fields or storehouses at approximately the cost for obtaining station delivery or side track delivery by rail. The Florida East Coast chose, instead of reducing the rates on its line on intrastate traffic, to continue to Docket 16295 scale as increased under Ex Parte 123, and make an allowance of 75 cents per ton to the consignee. This same scheme was followed by the Seaboard to stations on its line — Plains, Fla., and east or south thereof, Plains being about midway between Sebring and Okeechobee, Fla. The Coast Line also chose to follow this method to stations on its line from Harrisburg, Fla. to Lake Harbor, Fla., inclusive.

There two portions of the Seaboard and Coast Line are contiguous to Florence East Coast territory.

The reduction which had been made in the fertilizer scale for the shorter distances, with lesser reductions for distances 300 to 470 miles, and no reductions for greater distance, caused such complaints, particularly from the [fol. 968] fertilizer manufacturers located some distance from the ports that, following conference between traffic executives of southern roads and the fertilizer manufacturers, a further revision in the fertilizer rates applicable generally throughout the South was made effective January 21, 1941. Thereunder the rates for distances up to approximately 280 miles were made strictly with regard to truck competition, and the rates for greater distances were graded so that at 390 miles the original Docket 16295 scale was reached, and the original Docket 16295 scale was then applied for distances above 390 miles. Within Florida the rates were revised effective January 21, 1941, on the same basis as was observed elsewhere in the South, excepting that to points on the Florida East Coast and to stations on the Seaboard, Plains, Fla., and east or south thereof, on the Coast Line, Harrisburg to Lake Harbor, inclusive, there was continued the Docket 16295 scale, as increased under Ex Parte 123, with an allowance of 75 cents per net ton to consignees to cover cost of delivery from railway station to consignee's warehouses, farms, groves or other delivery points. While the minimum weight in connection with the original Docket 16295 scale was generally 40,000 pounds, the minimum weight applied in connection with the reduced rates as made effective January 20, 1941, was generally 60,000 pounds, except that within the Florida peninsula the minimum weight remained at 40,000 pounds.

In the decision in Docket 16295 the Commission applied the same scale of rates both on mixed fertilizer and on fertilizer materials. Within Florida there had been, and still is, in the Florida Classification, a rating of 75 per cent of Class M on various fertilizer materials. The rates on basis of 75 per cent of Class M were generally lower than the Docket 16295 scale, when applied for single line distances. The 75 per cent of Class M rates are published only as a single-line scale, and where two line hauls are in-

volved the rates for 75 per cent of Class M are made on combination less the Florida statutory deduction which [fol. 969] is 10 per cent when the traffic moves over two roads and 20 per cent when the traffic moves over three or more roads. The 75 per cent of Class M basis usually resulted in higher than the Docket 16295 scale rates when two or more lines hauls are required. Since the reduction voluntarily made in that scale to meet truck competition, the 75 per cent of Class M rates are, in many instances, higher for single line hauls than the regular fertilizer scale. Several attempts have been made without success, to obtain authority from the Florida Commission and from the Interstate Commerce Commission to cancel the 75 per cent of Class M rates on these fertilizer materials in Florida. Presently, the lower rates obtained under either the general fertilizer basis or the 75 per cent of Class M basis is applied on nearly all of the materials which are classed at 75 per cent of Class M, as will be shown in that portion of my exhibit which I will next refer to.

Section H of my exhibit sets forth the situation as to the Florida intrastate rates on fertilizer.

On page H-2 there is shown the different sections of Florida, with reference to the fertilizer scales which apply from or to those particular sections of the state. It will be noted that a column is referred to in the center of the page, under the heading "Rate Application." The letters shown in this column are used in the succeeding pages to indicate the particular scale to which reference is made. As spread out on this page the adjustment looks more complicated than it really is. As to the mixed fertilizers, there are really only two separate adjustments in effect. One of these is to destinations on the Florida East Coast and a small part of the Seaboard and Coast Line in southeast Florida, the rates to this section of Florida being on the Docket 16295 scale increased 10 per cent under Ex Part 123, with subsequent increase as authorized by the Florida Commission, and out of which rates the consignee is made an [fol. 970] allowance of 75 cents per net ton. In the balance of the state the rates on mixed fertilizers are on the truck competitive scale, which is generally applicable throughout the South, but with minimum weight of 60,000

pounds when the movement is north of the Florida peninsula, and 40,000 pounds when the movement is wholly within the Florida peninsula or between Jacksonville and the Florida peninsula, other than to or from the station on the Florida East Coast or the small portions of the Seaboard and Coast Line which are most nearly adjacent to the Florida East Coast.

Pages H-3 and H-4 of this section set forth the rates as applicable on Florida intrastate traffic, basic and as increased under Ex Parte 162 (FR&PUC Order 1443). No increase was authorized by the Florida Commission on fertilizer or fertilizer materials, either carloads or less carloads, under Ex Parte 166, FR&PUC Docket 1574, Order 1466 (C). Pages H-6 and H-7 of this section compare the scales applicable within Florida with the interstate scale as applicable between Florida points (these interstate scales are also applicable from southern states north of Florida to Florida); the increases, as obtained intrastate and interstate, being shown. The rates shown under Columns A and B are the truck competitive rates which are applicable throughout Florida except to points on the Florida East Coast and a minor portion of the Seaboard and Coast Line in southeast Florida. Note at line 19 on page H-6, that for 100 miles the interstate scale, including the Ex Parte 162 and 166 increases, is $2.03 per net ton, while for the same distance on Florida intrastate traffic the present rate is $1.62 per net ton. As an illustration of discrimination, the rate making distance from Valdosta, Ga., to Gainesville, Fla., is 114 miles, and from Tampa, Fla., to Gainesville, Fla., is 136 miles (rate basis numbers shown in Agent Spaninger's Fertilizer Tariff, ICC 975). The rate on fertilizer, carload, from Valdosta, Ga., to Gainesville, Fla., is $2.33 per net ton as shown on interstate traffic for distance of 114 miles at line 21 at page H-6 while from Tampa, Fla., to Gainesville, Fla., the rate is $2.10 per net ton as shown under [fol. 971] Column B opposite line 23 on the same page.

On page H-8 of this section, there is set forth the fertilizer materials which are rated 75 per cent of Class M in the Florida Classification. Some of the commodities are not carried in the general fertilizer list applicable on Florida intrastate traffic, and these commodities are shown opposite line 3 to 11, inclusive. On these commodities the 75 per cent

of Class M is the only basis of rates for application. Other of the commodities, and these include the fertilizer materials which move in the largest volume, are included in the list of fertilizer materials carried in the Fertilizer Tariff, these being shown opposite lines 15, 16, 17 and 21 through 29. Where fertilizer material is listed in both the Florida Classification and the Fertilizer Tariff, the lowest charge available under either tariff will apply.

On pages H-9 and H-10 of this section, there is shown the single line scale applicable over the Coast Line, Seaboard, Florida East Coast and L&N on fertilizer materials under the 75 per cent of Class M basis, the Florida intrastate rates on mixed fertilizers and fertilizer materials as published in the Fertilizer Tariff, and the interstate rates on fertilizer and fertilizer materials. It will be noted that the single line scale basis of 75 per cent of Class M is higher than the intrastate fertilizer truck competitive scale for distances up through 220 miles—line 5 on page H-10, but for greater distances than 220 miles the 75 per cent of Class M rate is lower than the truck competitive fertilizer scale.

On pages H-9 and H-10 there is also shown, in the last column, the Docket 16295 scale as increased 10 per cent under Ex Parte 123, 20 per cent increase under Ex Parte 162 and 25 per cent under Ex Parte 166 (limited to the maximum increase, where that would come into play). This is the present day equivalent of the scale on fertilizer and fertilizer materials, which the Interstate Commerce Commission prescribed as maximum reasonable rates on fertilizer and fertilizer materials within the South. As recently as January, 1948, in International Minerals and Chemical [fol. 972] Corporation v. Atlantic Coast Line Railroad, 269 ICC 611, the Commission used the Docket 16295 fertilizer scale, as increased 10 per cent under Ex Parte 123 as the underlying basis for the rates it prescribed on phosphate rock from south Florida points to various southern points, the rates prescribed having been predicated on 75 per cent of that scale, with authority to increase as per the general increases authorized by the Commission since June 30, 1946.

While sulphur is not a fertilizer material, and is not included in the fertilizer material list, on interstate traffic in the South, it is included in the fertilizer materials list on Florida intrastate traffic, that is, in the Fertilizer Tariff, not the 75 per cent of Class M list. Where sulphur moves on the

fertilizer rate intrastate in Florida no increase has been authorized under Ex Parte 166, FR&PUC Docket 1466 (C). Where rates have been published on sulphur different from (that is, less than on) fertilizer, the increase on intrastate traffic is 20 per cent under FR&PUC Docket 1466 (C) instead of 25 per cent as under Ex Parte 166. On pages H-11 and H-12, I have shown the intrastate Florida scale on fertilizer and fertilizer materials, as increased 20 per cent for the Ex Parte 162 (FR&PUC Order 1443) proceedings and have also shown the Class 18½M rates both within Florida and interstate, the latter including the increases authorized under the state or interstate permissive orders. Class 18½M is the exceptions rating published for application throughout southern territory, including Florida intrastate traffic, but the Class 18½M rates would have no application in Florida because the fertilizer rates are lower.

Section J of my exhibit shows the rates on citrus pomace intrastate between points in Florida as compared with interstate rates in southern territory north of the Florida peninsula. The present rates are those including increases through Ex Parte 166 or Florida Commission's Order 1466 (C). The sought rates as shown within Florida represent merely the full measure of the Ex Parte 162 and 166 increases. The rates on citrus pomace, carloads, between points in Florida [fol. 973] are the same as the fertilizer, carload, rates. Citrus pomace is obtained by pressing the water and juices from cannery refuse which is left from the canning of citrus juice or citrus sections, then grinding the pomace and subjecting it to rather intense heat for a certain period. When this product began to be made in some quantities, about 1935, a representative of the Seaboard's freight traffic department and I conferred with the manufacturer who brought to our attention the need for rates on this new commodity. We were advised, and I do not doubt that that advice was given in all good faith, that dried ground citrus pomace could be used as a substitute for soybean meal in preparing mixed feed, or as a fertilizer ingredient. We were also advised that there was no likelihood that the commodity would be used in Florida for other than as a fertilizer ingredient. Based on these two assumptions, both of which have later been proven incorrect, we established on the dried ground citrus pomace from Florida to interstate destinations the

same level of rates which the Interstate Commerce Commission, in ICC Docket 17000, part 8, reported 188 ICC 605, had prescribed on soybean meal, namely, Class 18½; and on intrastate Florida traffic we placed citrus pomace in the fertilizer group. When the more or less experimental stage was passed, it developed that dried ground citrus pomace is in no way competitive with soybean meal, but is competitive with beet pulp, and that there was much demand for citrus pomace in Florida as a mixed feed ingredient, with no use at least for the last ten years insofar as I can find, of this commodity as a fertilizer or fertilizer material. The importance of this commodity from a tonnage and revenue standpoint is indicated by the movement between Florida points developed during the four weeks test period as set forth in Section B of my exhibit. The terminations for that period on the Coast Line were 87 cars, on the East Coast 65 cars, on the L&N 3 cars and on the Seaboard 87 cars; a total of 252 cars with lading of slightly over 6,938 tons.

In the Ex Parte 162 proceeding, the Interstate Commerce Commission authorized 15 per cent increase on "pomace, NOIBN." The term "NOIBN" as there used does not mean not otherwise indexed by name in the Classification but not otherwise specified in the Ex Parte 162 decision. On [fol. 974] fertilizer and articles listed as taking the fertilizer rates in the rate tariff, the increase under Ex Parte 162 was 20 per cent with maximum increase of $1.20 per net ton. The rates on fertilizer between points in Florida are not high enough for the maximum increase to come into play. As citrus pomace is listed in the Fertilizer Tariff as taking intrastate fertilizer rates on Florida intrastate traffic the increase of 20 per cent under Ex Parte 162, FR&PUC Order 1443, was applied on citrus pomace. It has already been explained that within Florida no increase was allowed on fertilizer and articles taking fertilizer rates under FR&PUC Order 1466 (A) and 1466 (C) corresponding to the Ex Parte 166 case.

In Section J of my exhibit there are shown the present rates and the rates sought under the proceeding on citrus pomace, carload, between Florida points, and comparison is made of the Florida rates with the interstate rates applicable north of the Florida peninsula on Classes 22½V and 18½. The interstate Class 22½V and Class 18½ were

increased 15 per cent under Ex Parte 162 and 25 per cent under Ex Parte 166. I have explained that the carriers voluntarily established Class 18½ on citrus pomace between southern points, to take care of the movement from south Florida to interstate destinations. That rating is published with a restriction that it will not apply where milling or mixing in transit privileges are granted on citrus pomace. Class 22½V, the rating which is applicable on grain and grain products within the South, is published on citrus pomace when milling or mixing in transit privileges thereon are granted. Class 22½V is applicable within the South on beet pulp, the commodity with which citrus pomace is most nearly in competition. In the Southern Grain Case, I&S Docket 4208, including also Docket 17000, part 7A, 259 ICC 629, the Interstate Commerce Commission found Class 22½V to be reasonable on grain and grain products, including beet pulp, between southern points. Attention is called to the fact that, as shown on pages J-2 and J-3 of my exhibit, the intrastate Florida rates on citrus pomace, carloads, are materially lower that the interstate Class 18½ rates as applicable in the territory north of the Florida peninsula, and are still lower than Class 22½V rates.

[fol. 975] There is presently pending before the Florida Commission, in its Docket 1504-A, an application of the Florida carriers to increase the basic rates on citrus pomace to be Class 19, without the Florida arbitrary, which basis approximates the level of the truck competitive rates which have been established on grain and grain products from Jacksonville and Tampa to many south Florida points, and which is approximately the level of the truck competitive rates on a number of items in the grain and grain products list from south Georgia and southeast Alabama to south Florida points. We are not, under this proceeding, attacking the basic level of the Florida rates as we hope to bring them up to a more nearly normal basis under the handling before the Florida Commission in its Docket 1504-A. We do, however, seek, in this proceeding, the 25 per cent increase which was obtained under Ex Parte 166 on interstate traffic.

Within Florida, blackstrap molasses, carload, in tank cars, moves under Commodity Column 14 (this is 14 per cent of the Docket 13494 system of first class rates), as published in Item 395-G, Supplement 188 to Agent C. A. Spaninger's

Florida Tariff, Freight Tariff 711-B, ICC 519, the Florida arbitraries being waived. Interstate, within the South, the movement of blackstrap molasses is generally on specific commodity rates, most of which are higher than 14 per cent of first class. The general rating on interstate movements is Class 20, as published in Item 18650 of Note B Exceptions, Agent R. E. Boyle, Jr's. Exceptions 25 to Southern Classification, ICC 105.

There is a substantial movement of blackstrap molasses intrastate in Florida, the record for the Coast Line showing that for the year 1948, the movement from Clewiston in intrastate Florida traffic was 60 tank cars with total weight of 5,269,140 pounds. There was also a movement from Fellsmere, Fla., and from Jacksonville, Fla.

In Section K of my exhibit, I have set forth the specific commodity rates from New Orleans, La., Savannah, Ga., Norfolk, Va., and Clewiston, Fla., to interstate destinations, [fol. 976] showing the relationship of the commodity rates to the Docket 13494 K-2 first class scale, as modified for distances 190 miles and under. This shows that the interstate rates from each of these more important shipping points of blackstrap molasses to interstate southern points of distances comparable to those encountered in Florida, are usually higher than 14 per cent, running from 14% to 21%. Pages K-2 and K-3 also show what 14 per cent of the first class rates, as applicable in connection with the exceptions ratings, would produce for the distances involved. In every instance except one, that being in connection with the rates from Clewiston, Fla., to Huntsville, Ala., shown at line 10 on page K-3, 14 per cent of the first class rates would be less than the specific commodity rates indicated from New Orleans, La., Savannah, Ga., Norfolk, Va., and Clewiston, Fla., to interstate southern destinations. These pages also show what 14 per cent of the Docket 13494 first class rates without the Florida arbitraries are on Florida intrastate traffic, as increased 20 per cent under Florida Commission's Order 1443 and again increased 20 per cent under its Order 1466 (C) which corresponds to the Ex Parte 162 and 166 proceedings.

The Interstate Commerce Commission has not passed on the level of the interstate rates on blackstrap molasses

within the South, but it has, in several decisions, passed on specific point to point rates. The latest one of these was in ICC Docket 29864, reported 270 ICC 710, where it found that rate of 46 cents per 100 pounds, prior to the general increases of July 1, 1946, or subsequent thereto, to have been not unreasonable. The first class basic rate under the Docket 13494 system, from Clewiston, Fla., to Mobile, Ala., without the Florida arbitrary, is $2.06 per 100 pounds (Rate Basis 684), Agent Spaninger's Florida Tariff 711-B, ICC 519. 46 cents is 22.3 per cent of $2.06. In a much older case, ICC Docket 10672, decided June 23, 1921, reported 62 ICC 405, the Interstate Commerce Commission found that the rates on blackstrap molasses, in tank-carloads, from Savannah, Ga., Mobile, Ala., and New Orleans, La., to Knoxville, Tenn., [fol. 977] were unreasonable for the past and would be for the future to the extent they exceeded 25 cents per 100 pounds prior to August 26, 1920, and 31½ cents per 100 pounds thereafter. The 31½ cents rate would be subject to the 10 per cent reduction of July 1, 1922, in Docket 13293 and to the 10 per cent increase under Ex Parte 123, which would bring the rate to the level of 31 cents as of June 30, 1946. Such a rate would represent 16.1 per cent of the first class rate from New Orleans, 17.6 per cent from Mobile, Ala., and 19 per cent from Savannah, Ga.

There is a very large movement of phosphate rock between points in Florida which may be divided into three groups or kinds of movement. One is from the mine or washer to the drying plant, a very short haul movement under transit rates. There is a very large movement from the drying plants to the Florida ports for movement by vessel beyond in export or coastwise service and that movement is interstate in character. There is also a considerable movement of the dry phosphate rock from the drying plants and to some extent a movement of wet phosphate rock direct from the mines or the washers to Florida points for local use at those points.

The Florida Commission, by its Order 1156 of September 28, 1933, prescribed a scale of rates on phosphate rock, other than ground, and on pages L-2, L-3 and L-4 of Section L of my exhibit, I have shown that scale, as basic rates (i.e., as prescribed by the Florida Commission in 1933, and increased under Ex Parte 123), also as increased under Florida Com-

mission's Orders 1443 and 1466(C), corresponding to Ex Parte 162 and 166; also as sought in this proceeding. Compared therewith is shown 75 per cent of the ICC Docket 16295 scale on fertilizer and fertilizer materials as increased 10 per cent under Ex Parte 123, and with the interstate increases under Ex Parte 162 and 166. The Interstate Commerce Commission has, in several instances, prescribed as maximum basic rates on phosphate rock from Florida to interstate destinations in the South rates made 75 per cent of the original Docket 16295 scale as increased 10 per cent [fol. 978] under Ex Parte 123. The latest decision is that in ICC Docket 29451, reported at 269 ICC 611. As result of this last mentioned decision, the rates on phosphate rock from Florida points to interstate destinations in the South have been revised to the so-called 75 per cent basis, except where water competition has compelled retention of rates lower than that basis to southern ports.

It will be noted that the sought rates on phosphate rock under the intrastate scale, in Florida, are lower than the interstate basis for distances through 139 miles, but for distances above that are usually higher than the interstate basis. Where there are movements of phosphate rock in Florida for distances above 139 miles specific commodity rates have been published which do not exceed the interstate basis. For example, there is a substantial movement of phosphate rock to Cottondale and Pensacola, Fla. The basic rate published to these points is $3.30 per gross ton, whereas rates made 75 per cent of the Docket 16295 scale as increased 10 per cent under Ex Parte 123 would produce $3.93 per gross ton to Cottondale and $4.62 per gross ton to Pensacola.

It should be understood that the scale of rates shown on pages L-2, L-3 and L-4 will not apply on the movement of wet phosphate rock from the washer or the mines to the drying plant, except in the event the equivalent amount of dry rock is not shipped from the drying plant by the inbound rail carriers. It should also be understood that these rates are not applicable on ground phosphate rock, for which the Florida Commission in its Order 1156 prescribed a higher scale of rates for distances 75 miles and under, but for distances above 75 miles the prescribed scale on ground phosphate rock is the same as shown on pages L-2, L-3 and L-4.

On pages L-5 and L-6 there are shown specific commodity rates published on phosphate rock, other than ground, carload, to Jacksonville, Fla., and East Tampa, Fla., compared with the present interstate level and also as compared with the Florida mileage scale rates as shown on pages L-2, L-3 and L-4. Attention is called to the fact that the rate of $2.88 per gross ton as shown to Jacksonville is both the present [fol. 979] rate and the sought rate. The rate to Jacksonville was published first as a truck competitive rate subject to an expiration date. When the expiration dates were about to take effect the rates were republished, but with the same increases as had been obtained on interstate traffic.

On pages L-7 and L-8, I have shown the net transit rates on wet phosphate rock from the washers or mines to the drying plants, with comparison of the revenue obtained under such rates with those obtained for cross-town switching or for the transit privilege in connection with the transit rates on certain other commodities.

The net transit rates have both interstate and intrastate application, dependent upon whether the outbound product of the dry rock is shipped in interstate commerce or is itself intrastate. The amount of dry rock which is reshipped in intrastate traffic is of considerable volume, though the percentage as compared with that shipped in interstate traffic is very small.

The transit rate in effect many years before the Ex Parte 123 increase was 10 cents per gross ton, and that became 11 cents under Ex Parte 123. Under Ex Parte 162 this transit rate was increased 20 per cent becoming on interstate traffic 13 cents with the disposition of fraction, but in Florida Commission's Order 1443 no increase was authorized on Florida intrastate traffic on wet phosphate rock moving to the drying plants and, therefore, the rate remained 11 cents per gross ton on Florida intrastate traffic until changed by later decision in order 1466 (C), corresponding to the Ex Parte 166 revision. Under Ex Parte 166 the interstate transit rate was increased 25 per cent, becoming 16 cents per gross ton with disposition of fraction. The Florida Commission in its Order 1466 (C) authorized 20 per cent, as an emergency charge, under which the

intrastate net transit rate has now become 13.2 cents per gross ton.

It will be noted from the first tabulation on page L-7 that the net transit rates result in an average revenue per car handled of only $6.48 on intrastate traffic and $7.86 on interstate traffic. This is lower than the charge for the transit [fol. 980] privilege which is made for stopping carload freight for partial unloading or to complete loading, which is $10.83 per car. On a large number of other commodities where transit privileges are given, the through rates from first origin through the transit point to final destination are applied plus the transit charge. At the bottom of page L-7 and at top of page L-8, I have shown what the transit charge alone, under four such transit privileges, would amount to per minimum car, these transit charges ranging from $10.00 to $37.91. At the lower half of page L-8, I have shown the present cross-town switching charges at points in Florida. Particular attention is called to the charge of $11.88 per car on intrastate traffic or $12.38 per car on interstate traffic for intraterminal switching. Intraterminal switching is the handling of cars in switch service from one siding in a city, town or switching area to another siding in the same city, town or switching area. Incidentally, the same charge is made for intraplant switching as for intraterminal switching.

I will show later on that the failure to obtain the full increases in connection with the intrastate movement of wet phosphate rock to the drying plant has not only caused loss in revenue, but has directly affected the ability of roads having interstate routes between Florida points to compete for the handling of such traffic with roads having intrastate routes.

The movement of tin cans within Florida is quite large. It is seen from pages B-3, B-24, B-37, and B-41 of Section B of this exhibit that for the four weeks test period the Coast Line terminated 505 cars of tins cans, the Florida East Coast terminated 20 cars, the L&N terminated 2 cars and the Seaboard terminated 254 cars, all in intrastate movement.

In ICC Docket 22426, reported 191 ICC 761, the Commission found to be reasonable for application within southern

territory alternate rates and minimum weights of 55 per cent of first class at minimum weight of 14,000 pounds, 50 per cent of first class at minimum weight of 20,000 pounds and 40 per cent of first class at minimum weight of 30,000 pounds, the [fol. 981] minimum weights in each case being subject to Rule 34 of the Classification. Subsequently, southern roads voluntarily established general basis of Class 50-M, which represents 50 per cent of first class as of March 27, 1938, and is approximately 45 per cent of the present first class rates as governed by exceptions rating, subject to minimum weight of 14,000 pounds, to alternate with 40 per cent of first class at 30,000 pounds minimum. These ratings are applicable within Florida as well as interstate throughout southern territory, and, except where specific commodity rates have been published, the exceptions ratings and rates are applicable in Florida.

There is very keen truck competition, largely from privately owned trucks of the canners, in the movement of tin cans within Florida. Specific commodity rates designed to meet that truck competition have been established from Orlando, Fla., and from Tampa, Fla., to most of the canning plants. Section M of my exhibit shows these specific commodity rates, at the basic level, the present level and at the level sought by these proceedings. It also shows the first class rate for use in connection with exceptions rating, with no Florida arbitrary included, and the percentage which the commodity rates bear to such first class rates. All of these commodity rates are subject to minimum weight of 14,000 pounds. It will be noted that in all instances the commodity rates are less than 50 per cent of first class, and in all except one instance are less than 45 per cent of first class.

The general basis for rates on plaster and gypsum lath, carloads, within the South, is 17½ per cent of first class under exceptions rating in Item 9825½ of Note B, Agent R. E. Boyle, Jr.'s Exceptions 25 to Southern Classification, ICC 105. The rating generally applicable on plasterboard within the South is 22½ per cent of first class under exceptions rating published in Item 9828 of the tariff just mentioned. There are few, if any, commodity rates published on plaster, gypsum lath, or wallboard for interstate appli-

cation in southern territory, most all of the interstate traffic moving on class rates under exceptions ratings. [fol. 982] The same exceptions ratings are applicable within Florida, and except to points shown on pages N-2 and N-3 of Section N of my exhibit, the movement within Florida is at the class rates as governed by those exceptions ratings. The situation with respect to the present rates on plaster, gypsum lath and plasterboard, intrastate in Florida, is, therefore, the same as has been explained in connection with the class rate adjustment for commodities rated lower than 7th class under the modified Docket 13494 adjustment of rates, other than to points to which specific commodity rates have been published. On pages N-2 and N-3 there have been shown the specific commodity rates published from Jacksonville to points in the West Palm Beach-Miami section of Florida, these being the only specific commodity rates published within Florida on these commodities. These pages indicate the present commodity rates, those sought, and the relationship to first class which is found in the commodity rates. It will be noted that in each instance the commodity rates bear a lower relation to first class than 17½ per cent as to plaster and gypsum lath and lower than 22½ per cent as to plasterboard. These specific commodity rates were established to Miami for the specific purpose of meeting all-water competition, and to the other points shown for the purpose of meeting truck or water-truck competition.

The exceptions ratings of Class 17½ on plaster and on gypsum lath, and 22½ on plasterboard were voluntarily established by southern roads. The rating of 17½ per cent on gypsum lath was before the Interstate Commerce Commission in I&S Docket 4635, reported 235 ICC 399, and the Commission there found that rating to be not unlawful. In ICC Docket 28791, decided September 3, 1948, there was involved the question of discrimination against southern shippers of plaster and related articles from southern points to points in southern territory versus from official territory to southern territory. The Commission there required the removal of the discrimination be applying a common level of rates from the Official and southern territories to southern territory, and held that the maximum reasonable level from

[fol. 983] both territories to the South should be Class 17½ on plaster and gypsum lath, and Class 22½ on plasterboard applied to the Docket 13494 K-2 first class scale, as increased by general increases authorized subsequent to the Docket 13494 decision. The rates from the East to the South have now been revised to that basis.

There are a number of other commodities which move in rather large volume between points in Florida, and I have shown illustrations of the Florida rates, compared with the interstate rates, on these commodities in Section O of my exhibit.

Page O-2 of this section shows specific rates which have been published on sulphuric acid, in tank cars, from Florida points to Florida points. These are all of the commodity rates on sulphuric acid which I can find published between Florida points. The basis for most of these commodity rates is the so-called L&N or Fourth Section Committee scale which has been used rather generally as the basis for rates on sulphuric acide between southeastern points for the last 20 years. The rates on page O-2 are shown as for the basic level, the present intrastate rates and those sought. The L&N or Fourth Section Committee scale is then shown, as increased on interstate traffic under Ex Parte 162 and 166. It will be seen that in nearly every instance the sought Florida rate is the same as the L&N scale.

In the last two columns there have been shown for comparison the so-called Copperhill scale on sulphuric acid, in tank cars. The Copperhill scale was the one generally in use throughout the South before the L&N scale was adopted. There are many rates, particularly to the Carolinas, where the Copperhill scale is the underlying basis for the present rates. The Copperhill scale designated under Column A is that scale as changed by the general percentage changes up to Ex Parte 123, then increased 5 per cent under Ex Parte 123, and with the interstate increases under Ex Parte 162 and 166. Where the original Copperhill scale is the under-[fol. 984] lying basis for the present rates, the Copperhill scale as so increased would produce the presently applicable rates except that the Ex Parte 168 increase is now to be added. Under Column B, for the Copperhill scale, there is shown that original scale as changed up to the time

of Ex Parte 123, then increased 10 per cent under Ex Parte 123, and the regular interstate increases under Ex Parte 162 and 166. At the bottom of the page, by reference mark, reference is made to two decisions of the Interstate Commerce Commission which prescribed the Copperhill scale on sulphuric acid, in carloads, from Copperhill, Tenn., to various southern points. There is also indicated in the explanation of the reference mark that the Interstate Commerce Commission has consistently declined to award reparation, on special docket applications, to a lower level than the Copperhill scale as indicated under Column B.

On page O-3 there is shown, for representative distances, the rates applicable on asphalt, carloads, between points in north Florida compared with the interstate level. Asphalt moves within the South on Class 17½, except in a relatively few instances truck competitive rates have been established for short distances. The Interstate Commerce Commission found 17½ per cent of first class rates to be reasonable on asphalt, carloads, within southern territory in I&S Docket 3613, reported 191 ICC 659. While the rates here shown are applicable between north Florida points only, the situation with respect to the rates between south Florida points, or between north Florida and south Florida points, is identical with that already explained in connection with the class rates which apply when exceptions ratings are used.

Page O-4 shows for representative distances and for application between north Florida points, as compared with interstate rates applicable north of the Florida peninsula, the situation with respect to fibreboard, pulpboard or strawboard boxes, knocked down flat, or folded flat. These are the [fol. 985] Class 27½ rates. The rate situation as to paper boxes, carloads, within Florida is identical with that explained for class rates lower than 7th class which are governed by exceptions to the Classification.

The general level of rates on paper boxes within southern territory is 27½ per cent of first class under exceptions rating. There are some, but not a great many, truck competitive rates, which have been published within the South lower than on that basis. Also, by reason of having published rates from southern producing points on paper boxes to Ohio River crossings and Virginia cities on basis of the

Official territory level, which is Class 27½ applied to the Appendix E Docket 15879 first class scale, and observing such rates as maxima at intermediate destinations, there are some rates from southern producing points to destinations in Virginia, North Carolina, Kentucky and upper Tennessee which are less than 27½ per cent of first class, the degree of variance therefrom depending upon how near the destination is to the Ohio River crossings or the Virginia cities. All in all, however, the Class 27½ basis, under exceptions rating, is generally applicable on interstate traffic between points in the states of South Carolina, Georgia, Alabama and Mississippi.

Prior to about 1940, the general level on paper boxes, carloads, within the South was 30 per cent of first class, it having been reduced to Class 27½ as a truck competitive measure. 30 per cent was adopted when there was a general revision on paper and paper articles within the South, because of what is said at page 443 of the decision in Docket 15055, reported 104 ICC 442, as follows:

> "Specific commodity rates on paper boxes were prescribed from the Ohio River to the Mississippi Valley in *Rates to, from, and between points south of Ohio River,* 64 ICC 306, which are 30 per cent of the corresponding first class rates."

Page O-5 shows for representative distances the rates applicable on common brick, carloads, in north Florida and in south Florida, compared with the interstate scale applicable north of the Florida peninsula. In I&S Docket 1885, reported 88 ICC 543, the Commission prescribed a scale of [fol. 986] maximum reasonable rates for application within the South. Thereunder the rates on common brick were made 80 per cent of the rates prescribed on face brick and other articles in the uniform brick description, for distances 180 miles and under. Later, southern roads voluntarily extended the 80 per cent basis on common brick for all distances. About 1938 or 1939, reductions were voluntarily made in the I&S Docket 1885 scale for the purpose of meeting truck competition. For example, the I&S Docket 1885 scale on common brick, as reflecting the increase of 10 per cent under Ex Parte 123, would be for 100 miles 7 cents, 220 miles 9½ cents and 420 miles 14½ cents. The basic

rates between north Florida points for the same distances are, respectively, 6½ cents, 9 cents and 13 cents.

Page O-6 shows, for representative distances, present rates on insecticides, agricultural or horticultural, carloads, between points in Florida and the percentage relationship of such rates to first class. Agricultural or horticultural insecticides, carloads, are rated Class L in Florida Classification 11, Agent R. E. Boyle, Jr.'s ICC 79. The level generally applicable within the South today, except Florida intrastate, is 26 per cent of first class, at minimum weight of 40,000 pounds, 30 per cent of first class at minimum weight of 30,000 pounds. In ICC Docket 18519, 129 ICC 318, rating of 6th class which is 40 per cent of first class was approved on dry insecticides, carloads, from Jacksonville, Fla., to certain points in Georgia. In I&S Docket 4336, 225 ICC 97, the Interstate Commerce Commission approved 40 per cent of first class on insecticides, carloads, within the southwest, from the southwest and Official territory to WTL territory and between southwestern territory and southern or Official territory. It will be noted from page O-6 that the present rates within Florida are less than 20 per cent of first class under the modified Docket 13494 scale of class rates.

Pages O-7 and O-8 show specific commodity rates which are published on lime between Florida points. The general basis for rates on lime within Florida is a single line [fol. 987] mileage scale subject to minimum weight of 24,000 pounds. That scale is published in Coast Line's Florida Local Tariff, ICC B-3170, and the corresponding tariff of the Seaboard. Many of the specific commodity rates shown on pages O-7 and O-8 are exactly the same as the commodity mileage scale. This is true for the rates shown on page O-7 at lines 1, 4, 5, 7, 10, 12, 14, 17, 18, 20, 35 and 37, and those shown on page O-8 at lines 1, 2 and 3. The publication of the specific commodity rates the same as the mileage commodity scale is solely for the purpose of permitting one of the roads having a longer single line distance to meet the rates of the road having the shorter single line distance, or to permit joint line application by two roads to meet the single haul scale rate of another road.

On pages O-7 and O-8 the present rates are shown as basic

rates, the present intrastate rates and those sought. There is also shown on pages O-7 and O-8 the interstate scale on lime at minimum weight of 30,000 pounds which is applicable in southern territory north of the Florida peninsula, those rates being shown as basic and as present rates including the full Ex Parte 162 and 166 increases.

In I&S Docket 2874, 129 ICC 635, the Interstate Commerce Commission found to be reasonable a scale of rates on lime for application in southern territory north of the Florida peninsula. The present interstate rates as shown on pages O-7 and O-8 are the same as that scale, plus the general increases authorized since that decision. This interstate scale is not applied for the shortest distance over which carload traffic can move without transfer of lading, as are the class rate scales and numerous commodity scales, but is for application over the shortest tariff or workable route. This interstate scale is higher for joint line hauls than for single line hauls up to 70 miles, but is the same beyond 70 miles for either single line or joint line application. The I&S Docket 2874 interstate scale is subject to alternating rates dependent upon minimum weight, the rates for minimum weight of 50,000 pounds being 80 per cent of those [fol. 988] which are subject to minimum weight of 30,000 pounds. I have here made the comparison only with the interstate rates which are subject to minimum weight of 30,000 pounds, since all of the rates in Florida are subject to minimum weight of 24,000 pounds, except from Jacksonville, Fla., to south Florida points, as indicated on page O-7, they are subject to minimum weight of 30,000 pounds.

In the second decision in the Dann-Gerow case, 210 ICC 107, involving rates on lime from southern interstate producing points to Clearwater and St. Petersburg, Fla., the Commission prescribed the I&S Docket 2874 scale, plus Florida arbitraries made 25 per cent of that scale for the distance south of the Jacksonville-Chattahoochee line of the Seaboard.

It will be seen by comparing either the basic Florida rates or the sought Florida rates with the basic and present interstate rates as shown on pages O-7 and O-8, that sometimes the rates within Florida are higher, other times they are much lower than the interstate rates. For example, at line

14, from Ocala to Fort Lauderdale, the present basic rate is $3.22 per net ton, subject to minimum weight of 24,000 pounds, while under the interstate basic scale it would be $3.63 per net ton subject to minimum weight of 30,000 pounds. The present rate from Ocala to Fort Lauderdale is the same as the Florida mileage scale rate on lime. I have indicated that in the Dann-Gerow case, the Interstate Commerce Commission authorized arbitraries for the south Florida haul of 25 per cent of the interstate scale. Comparing the present intrastate rates with the interstate rates, it will be found that in very few instances are the intrastate rates higher than on the southern interstate scale plus Florida arbitrary of 25 percent. I find only one such, that being at line 8 on page O-7 where the interstate scale plus 25 per cent would result in basic rate of $3.58 per net ton as against the intrastate rate of $3.66 per net ton. As a matter of fact, out of the 55 rates shown on pages O-7 and O-8, in only ten instances are the rates higher than the [fol. 989] southern interstate scale without a south Florida arbitrary.

Page 0-10 shows, for representative distances, the present single line rates on livestock, carloads, within Florida, and in comparison therewith the interstate scale rates (applicable for either single or joint line hauls) on cattle, single deck, or calves, goats, hogs, kids, lambs, sheep, double deck.

The rates on livestock in Florida are the Class N rates, under the old system of class rates prior to the Docket 13494 adjustment, that rating being assigned to livestock in Florida Classification 11, Agent R. E. Boyle, Jr's. ICC 79.

In I & S Docket 4479, 253 ICC 241, the Interstate Commerce Commission prescribed rates on livestock for application throughout southern territory. Thereunder the rates on stocker or feeder livestock were made 90 per cent of the rates on ordinary livestock. Within Florida the Class N rates apply on all classes of livestock.

The intrastate rates shown on page 0-10 are the Class N rates, which apply per car of 20,000 pounds. The equivalent rates per 100 pounds have also been shown so as to afford comparison with the per 100 pounds rates on the southern interstate scale. It will be noted that the rates

sought in Florida under this proceeding, that is, basic rate increased by the full measure of the Ex Parte 162 and 166 increases, are always lower, sometimes materially so, than the interstate rates applicable to ordinary or fat livestock. The rates sought under this proceeding in Florida are sometimes lower, sometimes slightly higher, than the interstate rates on stocker livestock, but an average of the sought intrastate rates, for the distances shown is 36.6 cents per 100 pounds, while the average for the interstate rates on stocker livestock for the same distances is 36.77 cents.

The joint haul rates for livestock, carloads, on Florida intrastate traffic are made on combination, using the single line scale for each factor, less 10 per cent where the move-
[fol. 990] ment is over two lines or less 20 per cent where the movement is over three or more lines. During the test period only four cars of livestock were found moving over two or more lines. At page B-26, it is indicated that there was a movement of three cars of cows from Baldwin to Belleglade-Chosen, Fla. The rate assessed thereon, indicated as present charges, $297.36 for the three cars at weight of 60,000 pounds, is combination of the scale rate of the Seaboard to Jacksonville and that of the Florida East Coast beyond, deducting 10 per cent from each factor, with increases as authorized up to the present time by the Florida Commission. The charges shown of $297.36 figure out at rate of 49.56 cents per 100 pounds, and under the sought basis for charges of $309.75 would figure out at 51.625 cents per 100 pounds. The southern interstate scale for the short line distance of 305 miles is 49 cents through Ex Parte 166. Of course, presently, on interstate traffic the Ex Parte 168 increase of 6 per cent is applicable and, therefore, the present interstate rate is actually 51.94 cents per 100 pounds. The other joint line movement during the test period is shown on page B-37 of my exhibit, one carload of cattle from Cocoa-Rockledge to Chipley, Fla. The rate assessed is higher than under the southern interstate scale, but had the car been shipped via the available interstate route, which is via Florida East Coast to Jacksonville, Coast Line to Chattahoochee, Fla., L & N RR beyond, the lower interstate rate would have applied.

There has been pending before the Florida Commission since 1945 the application of Florida rail carriers for au-

thority to cancel Florida Classification No. 11, FR & PUC Docket 1497. The rail carriers' application sought authority to cancel the Class N rating and apply in lieu thereof the southern interstate scale, that which was prescribed by the Interstate Commerce Commission in I & S Docket 4779.

[fol. 591] Q. Does that conclude what you have to say with respect to the rate adjustments on the commodities which constitute the bulk of Florida intrastate traffic?

A. It does, but there are some other commodities which move in volume in intrastate Florida traffic, with which I have not dealt, and which will be covered by subsequent witnesses.

Q. Do you know of instances where there is competition between interstate routes and intrastate routes on traffic moving between Florida points?

A. There are quite a number of interstate routes which attempt to compete with Florida intrastate routes in the handling of traffic between Florida points. Between Chattahoochee, Fla., and points south or west thereof on the one hand and points east thereof which are reached by roads other than the Seaboard, there are interstate routes which are competitive with the intrastate routes formed by the Seaboard and its intrastate connections. For example, from all points on the L & N in Florida to points which the Seaboard can reach in connection with its own line or another road, there are intrastate routes, while in connection with the Coast Line the traffic must be handled through Georgia. Between points on the A & St AB Railway, and points in Florida east of Chattahoochee there is the intrastate route of the A & St AB Railway to Cottondale, Fla., L & N to Chattahoochee, Fla., and Seaboard or Seaboard and connections east of Chattahoochee, while the Coast Line's route in connection with the A & St AB is through Dothan, Ala., thence through Georgia to Florida. Similarly, between points on the Apalachicola Northern Railroad or points on the Marianna and Blountstown Railroad on the one hand and points on the Coast Line or the Florida East Coast Railway on the other hand, the Coast Line's route is through Georgia, while the Seaboard has an intrastate route except in some instances to or from local stations on the Coast Line. There are interstate

routes which compete with intrastate routes between points reached by the South Georgia Railway or Georgia and Florida Railroad on the one hand and practically all points [fol. 992] in Florida on the other hand. Also, the GS & F has routes through Georgia between certain points in Florida.

Q. Do you have some illustrations of this situation?

A. I have, in Section P of my exhibit. On pages P-3 and P-4 there are shown rates for representative classes between Jacksonville, Orlando, Tampa and Miami, Fla., on the one hand, and Pensacola, Panama City, Chattahoochee, and Port St. Joe, Fla., on the other hand. It will be seen that the intrastate rates are always lower than the interstate rates as increased under Ex Parte 162 and 166.

At page P-5 there is a sketch map illustrating the interstate and intrastate routes between the points used on pages P-3 and P-4.

I would say here that because of the loss of traffic from the Coast Line's interstate route to the intrastate route by reason of the disparity between the interstate and intrastate rates, that recently the Coast Line has made the intrastate rates applicable over its interstate route, where the differences in the interstate rates and the intrastate rates are solely those growing out of failure to obtain within Florida the full interstate increases, including the Ex Parte 168 increases. The showing of the differences between the interstate and intrastate rates run therefore to the period before the Coast Line and its connections met, via the interstate route, the intrastate rates. Of course, it is not intended to maintain the interstate rates between Florida point at the lower level when we have obtained from the Interstate Commerce Commission the relief sought in this proceeding.

There is a large movement of pulpwood from points on the Coast Line in Florida to Panama City and Port St. Joe, Fla., the normal route of the Coast Line being interstate through Georgia and Alabama to Dothan, thence A & St AB to Panama City or through Georgia to Chattahoochee thence Apalachicola Northern Railroad to Port St. Joe. Until we met within the past two or three months the intrastate rates to Panama City, we noticed a disturbing diversion of the movement of pulpwood to that point,

so as to be for our short haul to a nearby junction with the Seaboard, thence Seaboard to Chattahoochee, L & N to Cottondale, A & St AB beyond.

[fol. 993] On page P-7, I showed for the two months of December, 1948 and January, 1949, we handled 110 cars of pulpwood from our Florida points, destined to Panama City, so as to move via our short haul junction instead of via Dothan. It would probably be well to state here that prior to the increase of 25 per cent under Ex Parte 166, the rates on pulpwood from Coast Line origins to Panama City through Dothan were lower than the intrastate rates. I have also shown on page P-7, the revenue received via the short haul junction and that which would have been received had the traffic been handled via Dothan, using an average load per car of 14 cords. The use of that loading is somewhat of an understatement as the average loading will be somewhere between 14 and 15 cords. At the bottom of page P-7 I have shown that on these 110 cars our revenue via the short haul junction over which the traffic moved was $2,308.92, whereas had the traffic moved the interstate route, and which is only recognized route, the revenue thereon would have been $9,055.90. This shows a loss of revenue to the Coast Line of $6,746.98, which we should have obtained for that two months.

During the two months of December, 1948 and January, 1949, not all of the pulpwood going from Coast Line origins to Panama City moved via the intrastate route, where the charges via the intrastate route would have been lower than via the interstate route. On page P-9 I have indicated the movement for those two months, amounting to 221 cars, which moved both via our short haul junction and those which moved via Dothan where the intrastate rate via the short haul junction would have been less than via Dothan. I have also indicated the intrastate rates which, effective as of June 6, 1949, we established for application via the interstate route so as to be in position to handle the traffic via our long haul junction. In the last column on page P-9 there is shown revenue loss, based on an average of 14 cords per car, which would have been sustained as against the fully increased interstate rate had this movement of 221 cars taken place subsequent to June 6, 1949. That revenue loss to the Coast Line and A & St AB would total

$1500.10. On all the pulpwood moving from these particular origins, also from many other origins on the Coast Line [fol. 994] in south Florida, the Coast Line and A & StAB will continue to sustain revenue loss by reason of the unduly low intrastate rates, which they have had to meet in order for each of those roads to obtain its long haul, until the full increases are applied against the intrastate rates. On page P-10 there is a sketch map illustrating the interstate versus intrastate routes from the origins shown on page P-9 to Panama City. The interstate routes of the Coast Line from these Florida points to Panama City is not unduly circuitous and from some of the origins the interstate route is of less distance than is the intrastate route. On page P-7 it will be noted at line 6 that there was a movement from Dover, Fla., via Plant City. Via the intrastate route of movement the distance is 451 miles, while the short distance via the Coast Line to Dothan is only 435 miles. At line 1 on page P-7 it is noted that there was a movement of pulpwood from Altamonte Springs via Tavares to Panama City. Via that route, the distance is 448 miles while via the route of the Coast Line through Jacksonville and Dothan the distance is 490 miles which is only 9.4 per cent circuitous. The distances are those published in Agent C. A. Spaninger's Freight Distance Table, ICC No. 1054.

On page P-12 there is shown the movement of pulpwood from Coast Line stations in Florida to Port St. Joe, Fla., during December, 1948 and January, 1949. This amounted to 161 cars. In most of the instances shown the interstate rate was higher than the intrastate rates. Charges on basis of using for each car the minimum weight of ten units of 168 cu. ft. are shown under the intrastate rate and the interstate rate. There would have been a difference in the charges intrastate under interstate, on these 161 cars, of $107.90. I have also shown on page P-12 the revenue which would accrue to the Apalachicola Northern Railroad under the intrastate movement and the interstate movement. The Apalachicola Northern's proportion is its published rate from Chattahoochee to Port St. Joe as explained in the note [fol. 995] at the bottom of page P-12. It will be seen, at line 19, that while the difference in freight charges interstate over intrastate on the 161 cars is $107.90, the proportion ac-

eruing to the Apalachicola Northern Railroad thereon if the movement be interstate, is $698.74 higher than if the movement be intrastate. The pulpwood from our Florida points to Port St. Joe was not diverted to the intrastate route. On page P-13 there is a sketch map showing the interstate versus the intrastate routes to Port St. Joe from the origins named on page P-12.

On page P-14 there are shown the rates on phosphate rock from south Florida points to Cottondale and Pensacola, Fla., intrastate and interstate. There are also shown the distances via the intrastate routes and the interstate routes. I call particular attention to the fact that there are interstate routes which are less distant than the intrastate route. Effective May 9, 1949, the present intrastate rate was published to apply via the interstate routes. However, there is another feature in connection with the movement of phosphate rock which affects the ability of the interstate routes to participate in the movement, that being the lower net transit rate applicable on intrastate traffic than on interstate traffic. Even while the increases under Ex Parte 162 and 166 were the same on phosphate rock moving from the south Florida points, the Coast Line did not handle any part of the movement to Cottondale and Pensacola because, as is shown at page L-7 of my exhibit, the net transit rate into the drying plant on wholly intrastate traffic is 13.2 cents while on interstate traffic it is 16 cents per ton of 2,240 pounds.

On pages P-16 and P-17 there are shown the intrastate rates and the interstate rates on lumber and related articles from representative south Florida points to representative west Florida points. The interstate rates shown are not on the general level applicable elsewhere in the South, but are the basic Florida intrastate rates, as increased for intrastate and interstate movements, which we were authorized to maintain under appropriate 4th Section relief. [fol. 996] As explained in connection with Section E of my exhibit, the interstate rates on lumber and related articles north of Florida are much higher than the Florida intrastate rates. On page P-19, there is a comparison of the movement of lumber from points in Florida west or south of Chattahoochee to points in east or south Florida as obtained

from Coast Line passing reports and which moved via interstate routes in connection with the Coast Line, for the years 1946 and 1948. During 1946 the rates applicable via the interstate routes were the same as via the intrastate routes. It will be noted that in 1948, when the interstate rates were higher than intrastate, at least for the greater part of the year, the movement was less than half of what it was in 1946.

On page P-20 I have shown intrastate rates and interstate rates on citrus pomace from representative south Florida producing points to points on the L & N in west Florida. In connection with Section J of this exhibit I have explained that the intrastate Florida rates on citrus pomace are materially lower than the interstate level from Florida to points north of Florida, or between points in the South north of Florida. On citrus pomace, as on lumber, we did publish the Florida intrastate rates for application via the interstate routes, under appropriate 4th Section authority. That was on the rate level as of June 30, 1946, and page P-20 will show how the lesser increases on Florida intrastate traffic than on interstate traffic have affected the parity of the rates.

[fol. 997] Q. In your opinion, will the increases in rates and charges sought by this proceeding result in increased revenues for the Florida carriers?

A. That is my opinion.

Q. Do you have any means of testing the probability of the correctness of your opinion in that respect?

A. I think I do have. In Section R of my exhibit, I have analyzed the movement via the Coast Line, for the system, of all commodities as a group, and for three commodities separately which moved in large volume throughout southern territory for the years 1946, 1947 and 1948, and have compared the 1947 movement and revenues with 1946 and the 1948 movement and revenues with 1947. Also, I have made comparison of the Coast Line's tonnage and revenues for the first three months of 1949 as compared with the first three months of 1948 for several commodities and for all commodities grouped together.

For the first six months of 1946 the freight rates and charges were on what is now known as the basic or 100 per

cent level. Effective July 1, 1946, the Ex Parte 148 increases were restored on interstate traffic, and those increases were restored on that same date or later on in 1946 on intrastate traffic. Effective January 1, 1947, the interstate rates were increased under Ex Parte 162, and at various dates throughout that year those increases became effective, with some exceptions, on intrastate traffic. The interim increases under Ex Parte 166 became effective on interstate traffic at various times between October 13, 1947 through May 6, 1948, and the final Ex Parte 166 increases, very slightly different from the third interim increase thereunder, became effective August 21, 1948. The Ex Parte 162-166 increases did not become effective on intrastate traffic on the same date as on interstate traffic, except that in North Carolina the same effective date was observed as [fol. 998] to the Ex Parte 162 and the first interim Ex Parte 166 increase. In all the states very important traffic was excepted from the increases entirely, or lower increases were granted than on interstate traffic. In Alabama no increases have, as yet, been obtained either under Ex Parte 162 or 166.

I have attempted to show on pages R-2 through R-6 a rate index beginning with 100 for January, 1946. By reason of the maximum increases on some commodities for interstate traffic, and the varying dates on which the increases became effective on intrastate traffic as well as by reason of the various exceptions made by the state commissions in authorizing increases, it would be impossible to indicate exactly the rate levels since January, 1946 by a percentage of the rate level as in effect in January, 1946. I have, therefore, shown the rate indices by taking the greatest increases authorized in rates in southern territory on interstate traffic and as of the date such interstate rates became effective. On this basis it will be seen that, for example, at lines 19 through 21 on page R-2, the rate level in November and December, 1946 was 106, for the same months in 1947 it was 132, and for the same months in 1948 it was 150.

On page R-2 I have shown for all revenue freight handled by the Coast Line the tons and revenues for the years 1946, 1947 and 1948 divided into groups of months which would most readily permit comparison of the rate levels during

those months in the several years, and at the bottom of that page have shown the figures for the entire year. I would call attention to lines 22, 23, and 24 on page R-2 where it is indicated that for the year 1947 the rate index ranged from 120 to 132, as compared with rate index 100 to 106 during the year 1946. The Coast Line handled 2/10 of 1 per cent less tonnage in 1947 than in 1946, but the revenue it received from the 1947 tonnage was 9.58 per cent greater than for 1946. For the year 1948, the rate index ranged from 132 to 150, and the revenue handled in 1948 was 57/100 of 1 per cent less than in 1946 and 37/100 of 1 per cent less than in 1947, but the revenue received in 1948 was [fol. 999] 21.3 per cent greater than for 1946 and 10.72 per cent greater than for 1947.

On page R-3 I have shown similar figures to those on page R-2 except those on page R-3 relate to the tonnage and revenue on road aggregates, carload, only. While I have shown on line 24 on this page that the tonnage dropped in 1948 under that in 1946 or 1947, the revenue increased.

On page R-4 I have made a similar comparison for the movement of fertilizer and fertilizer materials, carloads, except that it has not been possible to show the year 1946 tonnage and revenues on this commodity. That is because effective January 1, 1947, the classification grouping for superphosphate was changed from the fertilizer and fertilizer material group to the phosphate rock group. There is a very large movement of superphosphate, and it would not be a true comparison to use the reported figure for the year 1946 on fertilizer and fertilizer material, which includes superphosphate when the figures for fertilizer and fertilizer materials for the years 1947 and 1948 exclude superphosphate. At line 16 of page R-4 it is shown that for the year 1948 as compared with 1947 the fertilizer tonnage decreased, but the revenue showed a slight increase.

On page R-5 I have shown similar figures for lumber and articles usually taking the lumber rates for all of the three years of 1946, 1947 and 1948. Included in this group of commodities are all of the commodities which are grouped in Accounting Classification Group 403, which consists principally of posts, poles and piling; Group 411, which consists principally of lumber, shingles and lath; Group 413, which consists principally of box, crate and

cooperage material; and Group 415, which consists principally of veneer and plywood or built-up wood. I call attention to lines 22, 23, and 24, on page R-5, from which it is seen that for the year 1948, when the rate index ranged from 132 to 150, there was a decrease in tonnage, but a material increase in revenue.

[fol. 1000] On page R-6 comparison is made of the tonnage handled and revenue received by the Coast Line from the handling of that tonnage for the first three months of the year 1949 as compared with the first three months of the year 1948. It will be noted that on road aggregates there was a material increase in tonnage and revenue. On lumber there was a material decrease in tonnage but an increase in revenue. On fertilizers and fertilizer material there was an increase in tonnage and a material increase in revenues. On superphosphate, for which the Coast Line has kept for its own purpose separate record since August, 1947, there was material increase in both tonnage and revenue. On fertilizers, including superphosphate, there was an increase in tonnage and a material increase in revenue. On both bituminous coal and phosphate rock there was a severe reduction in tonnage and revenues. So far as the Coast Line is concerned, there is no truck competition on either bituminous coal or phosphate rock, so that the large reduction in tonnage and revenues on those two commodities cannot be attributed to diversion to trucks. On all commodities except bituminous coal and phosphate rock there was a reduction for the three months of 1949 as against 1948 of 2.24 per cent in tonnage, but only 48/100 of 1 per cent in revenue.

It is inescapable that had we obtained the full measure of the interstate increases on intrastate movements the showing as to revenue increases in Section R of my exhibit would have been greatly improved.

[fol. 1001] RESPONDENT'S EXHIBIT 13

Testimony of W. W. Wolford in I. C. C. Docket 30140 Hearing, Daytona Beach, Fla., June 28, 1949

(Qualifying questions and answers)

Q. Proceed with your prepared testimony.

A. The Seaboard Air Line Railroad operates in Virginia, North Carolina, South Carolina, Georgia, Florida and Alabama. About 38% of its mileage is in the state of Florida. Approximately 7% of its system freight revenue is derived from Florida intrastate traffic. A much larger percentage of its freight revenue is derived from transportation of interstate traffic to and from points in Florida. The estimated losses in revenue by the Seaboard Railroad resulting from the failure of the Florida Railroad and Public Utilities Commission to authorize the same increases on Florida intrastate traffic as the Interstate Commerce Commission granted on interstate traffic under its decision in Ex Parte 162 and 166 have been shown in an exhibit already placed in the record by a prior witness, Mr. C. L. Hinnant.

Q. What is your opinion as to whether the increases sought would produce additional revenue for the Seaboard?

A. It is my opinion that the increases sought would produce additional revenue. In support of that opinion, I have prepared, and now offer for identification, Exhibit No. 14, consisting of one page. This exhibit is captioned "Seaboard Air Line Railroad System Freight Revenues for the Months shown." The exhibit shows the Seaboard's freight revenue for the first five months of 1946, for comparison with the same months of 1947 and 1948. This 5-month period in 1946 was prior to either the Ex Parte 162 or Ex Parte 166 increases on interstate or intrastate traffic. The same 5-month period in 1947 is after the Ex Parte 162 increase [fol. 1002] went into effect January 1, 1947. That increase was 20%, subject to certain maximum increases in the rates on numerous commodities. On certain commodities, such as coal, specific increases in the rates were prescribed, which were much less than 20%. The overall effect of these increases as prescribed on Seaboard's traffic was estimated by the Seaboard to produce an overall average of about 17.5% on interstate traffic. The various State Commissions did not authorize these same increases in full on all traffic in any state in which Seaboard operates, and there was an additional time lag after January 1, 1947 before any of the states in which Seaboard operates (except North Carolina), granted such increases as each did grant. The effect of the failure of the State Commissions to grant the increases

promptly and in full was to bring down the average percentage of increase obtained during this period (first 5 months of 1947) to a still lower percentage. It is not possible to estimate the effect accurately, but it must have had the effect of bringing it down to around 16.5%. The final column opposite the year 1947 shows that Seaboard's revenues, this period in 1947 over the same period in 1946, increased 16.4%. The increase granted in Ex Parte 162 on interstate traffic did therefore have the effect of producing additional revenues on interstate traffic, and I am of the opinion that had the Florida Commission authorized the full Ex Parte 162 increases on Florida intrastate traffic, substantial additional revenue proportionate to the increase, would have been produced.

The final line on the exhibit shows the results under the Ex Parte 166 increase that went into effect January 5, 1948 on interstate traffic. That was also a 20% increase, similar to the Ex Parte 162 increase just described, and on intra- [fol. 1003] state traffic there followed even more pronounced time lags, and failures to grant the full increases on all commodities.

There also occurred between these two periods the reduction of approximately 10% in the class rates, effective on or about August 21, 1947 under ICC Docket 28300, which had the further effect of offsetting and reducing the amount of the increases in revenue derived from the Ex Parte 166 increase as measured by these two 5-month periods.

Despite these circumstances, which had the effect of reducing the average percentage of the increase received as applied to the traffic handled during this period, the Seaboard's freight revenues for this period in 1948 showed an increase of 13.1% over the same period in 1947.

Of course, if it were possible to separate the interstate traffic and revenues from the intrastate, the percentage of increase shown to be derived on interstate traffic alone would have been much higher than the overall average of 13.1% derived on both.

The increase granted in Ex Parte 166 on interstate traffic did have the effect of producing additional revenues, on interstate traffic, and I am of the opinion that had the Florida Commission authorized the full Ex Parte 166 in-

creases on Florida intrastate traffic substantial additional revenue, proportionate to the increase, would have been produced.

Q. Have you prepared some other exhibits dealing with specific commodities on which the Florida commission did not authorize increases against the intrastate rates equal to those authorized by the Interstate Commission against interstate rates?

A. Yes. I have prepared several exhibits of this kind dealing with various commodities.

[fol. 1004] Pulpwood Within Florida

Most of the pulpwood rates intrastate in Florida reflect the Roanoke Rapids scale, although some reflect one-tenth of Florida intrastate Class P rates. The Roanoke Rapids scale is the scale that is generally in effect throughout the South on interstate traffic.

I offer for identification Exhibit No. 15, consisting of two pages, captioned "Rates Reflecting Roanoke Rapids Scale—160 Cubic Feet Unit"; with a sub-caption showing the origin areas from which, and the pulp and paper mill destinations to which this scale has application.

In Ex Parte 162 the Interstate Commerce Commission authorized on interstate pulpwood traffic an increase of 20%, subject to a maximum of 8 cents per cwt., and in Ex Parte 166. This information is shown under columns 1, 2 of 25% with no maximum attached. This information and the resulting rates are shown in columns 4, 5 and 6 on this exhibit. The Florida Commission authorized a 9% increase under Ex Parte 162 and a 20% increase under Ex Parte 166. This information is shown under colums 1, 2 and 3 of this exhibit. In Ex Parte 166, the pulp and paper mills, through their traffic managers, filed verified statements in opposition to the increases sought by the railroads on pulpwood in that case. I filed a verified statement in rebuttal, dated December 6, 1947, at the Washington hearing held December 8 to 12, 1947. This rebuttal statement placed before the Commission the history of the Roanoke Rapids scale; the low level of those rates; and comparative rate statements having for their purpose the showing of the low level of those rates. In that rebuttal statement, I stated

"* * * the rate level on which pulpwood moves within Southern Territory is about the lowest in existence on any traffic, and approaches the very minimum of reasonable-[fol. 1005] ness." In prescribing the increases that were granted in Ex Parte 166, the Interstate Commission had before it evidence of the reasonableness of the basic rates, and of the reasonableness of such basic rates with the general increases added. In my Exhibit No. 15 in the present case, I have shown in columns 7 to 12, inclusive, still another comparison going to the reasonableness of these interstate rates, and to the reasonableness of the intrastate rates, plus the increases here sought. This comparison is with the pulpwood rates prescribed by the Interstate Commission in the Covington Case, Docket 14358, reported in 96 ICC 244. Note 2 on page 2 of the exhibit describes the application of that scale. By comparing the rates in column 12 on page 1, with the rates in column 6 on page 1, it is seen that the originally prescribed Covington Scale, subjected to the subsequent general increases, produces rates substantially higher than the Florida intrastate rates, with the increases here sought added.

I should point out that the Covington scale was prescribed for joint-line application, whereas it is being compared with the Roanoke Rapids scale for single-line application. However, it will be observed that the Covington joint-line scale produces rates that are higher than full combination of the Roanoke Rapids single-line scale. For example, the Covington Scale rates for a 200-mile haul is 688 cents per cord (see col. 12), whereas the full combination of the Roanoke Rapids scale for 100 miles up to the junction and 100 miles beyond the junction would double the 320-cent rate for 100 miles shown in column 6, or a total of 640 cents. For 300 miles the comparison is 868 cents versus 752 cents. The same thing is true when combinations are made by using one-tenth of Class P up to the junction minus the 10% Florida statutory deduction in [fol. 1006] making combination rates, plus the Roanoke Rapids scale beyond the junction.

I also offer for identification as Exhibit No. 16, another exhibit dealing with pulpwood, captioned "Rates Reflecting Roanoke Rapids Scale—168 Cubic Feet Unit." This ex-

hibit consists of two pages and has application on pulpwood from Seaboard Railroad stations to Fernandina, Fla. It is similar in all respects to the next preceding exhibit and requires no further comment.

I also offer for identification, as Exhibit No. 17, another exhibit dealing with pulpwood, captioned "Rates Reflecting one-tenth of Class P." This exhibit consists of two pages, and has application on pulpwood from ACL and FEC stations to Jacksonville, as shown in the subcaption. Comparison of the rates in columns 4, 5 and 6 with the rates in columns 7, 8 and 9 shows that the intrastate one-tenth of Class P rates, increased as here proposed are higher than the Roanoke Rapids scale rates similarly increased. However, as heretofore pointed out, the Roanoke Rapids scale is a very low scale, much below a level that would represent maximum reasonable rates. The one-tenth of Class P rates subjected to the increases here proposed, are substantially lower than the rates prescribed in the Covington Case, shown in columns 10 to 14, inclusive.

I also offer for identification as Exhibit No. 18, a statement of one page, entitled "Pulpwood Carload—Basic Rates prior to Ex Parte 162 and 166 Increases." This exhibit reproduces the Covington Scale, including the Ex Parte 123 increase. It further shows the pulpwood scale prescribed by the Commission in Docket 14883, reported in 104 ICC 495, for application in Delaware, Maryland, [fol. 1007] Pennsylvania and West Virginia as described in Note 2 on the exhibit, as increased under Ex Parte 123. Lastly it shows the Roanoke Rapids scale increased under Ex Parte 123. This exhibit, like the preceding exhibits, shows that the Covington Scale is far higher than the Roanoke Rapids single-line scale, and as has been heretofore mentioned, is higher than is produced for a joint haul by using full combination of the Roanoke Rapids scale. This exhibit further shows that the pulpwood scale prescribed in 104 ICC 495 for application from points in Delaware, Maryland, Pennsylvania and West Virginia to paper mills in that area, even for *single* line application is generally about as high as the Covington scale for *joint* line application, and of course far higher than the Roanoke Rapids scale.

Cement

My next exhibit offered for identification as Exhibit No. 19 consists of 3 pages and is captioned "Representative Specific Rates on Cement and Related Articles, Carload, from Tampa, Fla."

On cement, the Florida Commission granted the full Ex Parte 162 interstate increases on Florida intrastate traffic. Under Ex Parte 166, the Interstate Commission granted an increase of 25%, maximum 40 cents per ton (see Col. 6), whereas the Florida Commission granted only 20%, maximum 40 cents per ton (see Col. 3). The only cement mill in Florida is located at Tampa.

The relationship of the rates on cement from cement mills outside Florida to points in Florida with the rates from Tampa to Florida points was fixed by the Interstate Commerce Commission in the Fifth Supplemental Report of the Commission in Docket 15806, Southern Cement Rates, 243 ICC 365, decided January 24, 1941. No formal order [fol. 1008] was issued, inasmuch as the Florida Commission elected to permit the rates from Tampa reflecting the prescribed relationship to go into effect without an order. The findings in that case are reproduced as page three of my exhibit.

Following that decision, the rates from Tampa and from interstate shipping points were revised in conformity therewith, and still reflect that revision except that the intrastate rates from Tampa have not been increased under Ex Parte 166 to the same extent as from interstate shipping points, thereby disrupting the prescribed relationship.

Column 3 of pages 1 and 2 of my exhibit show the present intrastate rates from Tampa to base points in Florida. Column 6 shows what those rates should be to restore the relationship.

The reasonableness of the interstate rates is covered by the first paragraph of the findings reproduced on page 3, and needs no further comment.

Phosphatic Sand and Clay

I offer for identification, as Exhibit No. 20, a statement consisting of four pages, the first page being captioned

"Rates on Phosphatic Sand and Clay, Carload, between points in Florida (except Florida Peninsula Points)."

Comparison of column 2 with column 5 shows that the Florida Commission authorized the full Ex Parte 162 increase, that was authorized by the Interstate Commission on interstate traffic, i. e., 20%, subject to a maximum of 30 cents per ton. Comparison of column 3 with column 6 shows that the Florida Commission authorized no increase under Ex Parte 166, whereas the Interstate Commission authorized a 25% increase, subject to a maximum of 60 cents per ton.

[fol. 1009] Columns 7, 8 and 9 show that the Interstate Commerce Commission has just recently decided a case approving a level of interstate rates on these commodities from Florida producing points to destinations in Southern Territory, including destinations in Florida. That case was I&S Docket 5412, decided December 15, 1948. The rates there approved became effective January 7, 1949, as shown by column 7.

Column 4 compared with column 7 shows that the Florida intrastate scale applicable within North Florida is the same as the interstate scale prescribed in I&S 5412 and made effective January 7, 1949, for distances up to 260 miles. Beyond that distance the Florida intrastate scale is one cent higher up to 290 miles, and beyond 290 miles is lower by varying amounts.

Column 6 compared with column 9 shows that when the interstate Ex Parte 162 and 166 increases here proposed are added to the Florida intrastate basic scale the resulting rates will either be the same as or lower than the interstate scale throughout, except for distances 261 to 290 miles, where it would be 2 cents per ton higher. The reasonableness of the North Florida intrastate rates increased as here proposed, as shown in column 6, is amply demonstrated by the interstate rates shown in column 9.

The production of phosphatic sand and clay in Florida is only in the Dunnellon and Bartow areas in the Florida Peninsula, as described in the report in I&S 5412, 273 ICC 373. The rate situation from this actual producing area will be covered by pages 3 and 4 of this same exhibit. These pages will be discussed next. There being no production within North Florida (the area covered by pages 1 and 2)

there probably is no movement, or at least little movement [fol. 1010] on those rates. However, the rate situation within North Florida required this explanation in order to make clear the rate adjustment in both parts of the state.

Pages 3 and 4 deal with the rates within and from the Florida Peninsula. As I have stated, the production of this traffic in Florida is in the Dunnellon and Bartow areas, which areas are located within the Peninsula, so the rate situation shown on pages 3 and 4 is the rate situation applicable to the actual traffic that is moving, as distinguished from the isolated movements, if any, that may occur within the North Florida area.

By comparison of the basic scale shown in column 1 on page 3, applicable within Peninsular Florida and from Peninsular Florida to North Florida, with the column 1 basic scale applicable within North Florida, it will be seen that the former is higher than the latter for distances over 175 miles. The extent of these differences or the amount of the Peninsular arbitrary is shown in column 10 after being subjected to the interstate Ex Parte 162 and 166 increases.

[fol. 1011] Petroleum and Petroleum Products

I offer for identification Exhibit No. 21, consisting of one page, captioned "Rates on Petroleum and Petroleum Products, viz., Gasoline, Kerosene, Fuel Oil, etc., as described in FRR and PUC Docket 1570." The basic rates in Florida, shown in column 1, were prescribed by the Florida Commission in its Docket 1570 of April 6, 1948. Column 2 shows that the Florida Commission authorized the full Ex Parte 162 increase against these basic rates, that increase being 20%, subject to a maximum of 6 cents cwt. Column 3 shows that the Florida Commission authorized an increase of only 20%, maximum 10 cents cwt. under Ex Parte 166, whereas the Interstate Commission authorized 25%, maximum 10 cents cwt. The basic scale with the full Ex Parte 162 and 166 increases as here proposed is shown in column 4. The reasonableness of the Florida scale, so increased, is shown by comparison with the rates in column 6, reflecting the normal rate level prescribed by the Commission for application in Southern Territory in Docket 17000 part 4, with the subsequent general increases added.

(Here follows 1 Paster, side folio 1012)

[fol. 1014] RESPONDENT'S EXHIBIT 29

Direct Testimony of E. C. HICKS, JR., in ICC Docket No. 30140

Q. Will you please state your name, residence and railroad connection?

A. My name is E. C. Hicks, Jr., and I reside at Wilmington, North Carolina, the headquarters of the Atlantic Coast Line Railroad, with which company I hold the position of Assistant Freight Traffic Manager.

Q. How long have you been connected with the Atlantic Coast Line Railroad?

A. Just under twenty five years, although my experience in railroad freight traffic department work is slightly more than thirty years.

Q. With what segment of the rates involved in these proceedings do you propose to deal?

A. I have been delegated by the Florida railroads involved in these proceedings to deal with the net transit rates on sugar cane from producing points around the southern shores of Lake Okeechobee to Clewiston, Fla.

Q. Are you familiar with these rates on sugar cane?

A. I am familiar with these rates on sugar cane, as well as the rate on raw sugar, the product of the cane, from Clewiston, Fla., to Port Wentworth, Ga., where the raw sugar is shipped for refining. Ever since the growing of sugar cane and the production of raw sugar in the southern part of Florida was first begun the railroads have proceeded upon the underlying idea of keeping the producers on a reasonably competitive basis with producers in Cuba and Puerto Rico, their only source of competition.

Q. Will you please review the history of the rates that have been established by the railroads, particularly on the inbound cane, and present in your own way the facts and such supporting data as may be necessary?

[fol. 1015] A. Sugar cane growing and raw sugar production in the Lake Okeechobee area was started during the early 1920's. A sugar mill was constructed at Canal Point and began operation in 1923, or before any railroad was built into the area. Traffic to and from the mill was moved via barge operating on Lake Okeechobee and on canals

leading to the Florida East Coast Railway at West Palm Beach or Fort Lauderdale. The Florida East Coast Railway built into Canal Point early in 1925.

Mr. Dahlberg, who was connected with the Celotex Corporation and interested in a rather substantial way in the production of sugar cane in Louisiana, became interested also in the Florida production and as result the planting of cane along the southern and southeastern shores of Lake Okeechobee increased so rapidly that by 1928 approximately 20,000 acres had been planted to cane.

Along about that time, the Southern Sugar Company was organized and another sugar mill was erected at Clewiston. Somewhat later, because the cane growing area became so greatly extended and because the mill at Clewiston was so enlarged and modernized, the mill at Canal Point was abandoned and all of the manufacturing activities of the Southern Sugar Corporation were concentrated at Clewiston.

In order to serve the Clewiston mill in the transportation of its raw sugar to Port Wentworth, Ga., the Atlantic Coast Line Railroad extended its rails slightly more than 15 miles to Clewiston from what was then the terminus at Moore Haven. Also, to facilitate the movement into Clewiston of cane produced along the Florida East Coast Railway, east of the Miami Canal, the Atlantic Coast Line Railroad extended its rails an additional distance of 10.2 miles [fol. 1016] to Lake Harbor where it made connection with the Florida East Coast Railway, which extended its rails 20½ miles from Canal Point in a southerly and westerly direction to Lake Harbor. The extensions were completed and the interchange at Lake Harbor was effected in 1929.

In the meantime, during the fall of 1928, Mr. Dahlberg, President, and Mr. E. C. Cole, Assistant to President, Southern Sugar Corporation, had arranged conferences with traffic executives of the Atlantic Coast Line and Florida East Coast for the purpose of discussing the adjustment of freight rates on all movements involved in the Sugar Company's complete operations. There was a series of such conferences, the first being held October 2, 1928. At that time, Mr. Cole advised that the conference was of a preliminary nature and handed the railroad representatives a memorandum, accompanied by rate statements, in support

of his request for inbound rates on sugar cane, sugar mill machinery, sugar bags, etc., and outbound rates on raw sugar and blackstrap molasses. The refinery at Port Wentworth, to which it was intended that the raw sugar would be shipped, was then drawing all of its supply from off-shore producers, principally mills in Cuba, and it was explained that the competition to be met by the Sugar Company was the Cuban producers of raw sugar.

At another conference, held in Washintgon, D. C., on December 4, 1928, and attended by Mr. Cole, Assistant to President, Sugar Corporation, Mr. F. W. Kirtland, Freight Traffic Manager, Florida East Coast Railway, and Messrs. C. McD. Davis, Freight Traffic Manager, and R. J. Doss, General Freight Agent, Atlantic Coast Line Railroad, the [fol. 1017] whole situation was explored in considerable detail and an exhaustive study was made of the comparative costs of the Cuban and Clewiston operators in handling their raw sugar from the origin of the cane through the mill to the final destination at Port Wentworth, Mr. Cole comparing the sum of the inbound cane and outbound sugar rates proposed at the previous conferences with the total cost of moving Cuban cane to Cuban mills and raw sugar produced therefrom to Port Wentworth. Since the distances from the cane fields to the mill ranged from one to thirty or more miles, the Sugar Company was faced with two very important problems. One was that of moving the cane to the mill and the other was moving the sugar from the mill to the refinery. Throughout all of the conferences, the primary consideration was to keep the combined costs of these two services on such level as to produce a total transportation cost no greater than that of the competing mills in Cuba, which enjoy the benefit of water transportation of their product.

The discussions of transportation charges on the inbound cane and on the outbound raw sugar were so interwoven at all of the conferences that the two rate adjustments were considered together, the total of the inbound and outbound transportation costs having been the ultimate goal in all of the negotiations. In that respect, the situation today is identical with what it was in 1928. In all of these discussions the rates and service on sugar cane from the fields to the mills were the subject of the greater part of the dis-

cussions. Mr. Cole, having given the railroads copies of the mileage scales of rates on sugar cane applicable in Louisi- [fol. 1018] ana and in Cuba, asked them to establish rates on cane to the Clewiston mill in line with those from Louisiana cane fields to the Louisiana mills, but it developed that Clewiston's real competition would be with Cuban, rather than with Louisiana, producers. Furthermore, the mileage scales applicable in Cuba were lower than in Louisiana. In fact, the Atlantic Coast Line and Florida East Coast advised Mr. Cole that the measure of the Cuban sugar cane scale was so low that they could not afford to operate it over their lines.

One of the provisions of the Cuban cane scale was that percentage deductions would be made from the rates if the shipper should furnish the cars and/or locomotives. In other words, predicated upon the furnishing by the shipper of cars and locomotives, the scale of rates was actually a trackage arrangement, that is, an arrangement to pay for use of the tracks. Mr. Cole proposed that the Sugar Company furnish its own cars and locomotives and that the Atlantic Coast Line and Florida East Coast agree to operate on the inbound cane a trackage arrangement similar to that in Cuba, including application of the Cuban mileage rate scale with the various percentage reductions corresponding with those made in Cuba in consideration of the mill furnishing its own cars, etc. As to the outbound rate on raw sugar from Clewiston to Port Wentworth, he proposed that it be made with relation to the charge for transporting raw sugar from Cuban North Coast ports to Fort Wentworth, saying that adoption of these proposals would place Clewiston sugar at the Port Wentworth refinery for the same transportation charge as paid by Cuban producers.

Mr. Cole had overlooked and failed to include in his compilation various rather substantial items embraced in the [fol. 1019] costs of transporting Cuban cane and raw sugar. These items were pointed out, the figures adjusted accordingly, and his proposed basis was adopted in principle by the railroads.

The mileage scale of trackage rates on sugar cane in Cuba was, and still is, strictly a scale of transit rates, its application being conditioned upon rail movement, from

the mill of the raw sugar produced from the cane handled on such rates. Also it was, and still is, strictly a single line scale. No joint hauls are permitted, and in the event of a joint haul class rates on the inbound cane, as well as on the outbound sugar, become applicable. They were, and still are, from four to six times as high as the transit commodity rates. This Cuban scale applied in cents per two cubic meters which is the equivalent of one metric ton, i. e., 2,204.6 pounds. The distances were stated in kilometers, i. e., 3,280 feet, or slightly less than five-eights of a mile.

The railroads stated that the expenses of the service, train crews, etc., in Florida greatly exceeded the corresponding expenses in Cuba and they were unwilling to apply the same scale if the railroads were to perform all of the services and furnish all of the equipment, but that they would be willing to consider the establishment of a trackage arrangement under which the Sugar Company would furnish power, equipment, crews, and a pilot. The Cuban trackage scale under which such services were furnished by shippers was substantially 60 percent of the Cuban transportation rates. Therefore, the Cuban scale was converted to a net ton and a mileage basis and the single line scale thereupon adopted by the railroads was 15 cents per ton for 5 miles; 18 cents for 10 miles and over 5; 22 cents for 15 [fol. 1020] miles and over 10; 25 cents for 20 miles and over 15, and 28 cents per ton for 30 miles and over 20. These rates were made by taking 60 percent of the Cuban scale and adding thereto 6 cents per ton, which approximated the additional charges made by the Cuban railroads for accessorial services.

The Cuban scale being strictly a single line scale, it was contemplated that, for joint line hauls from Florida East Coast Railway origins to Clewiston, rates for each railroad based on the single line scale just mentioned would be combined and 6 cents per ton would be deducted from the total since it was felt that this amount, approximating the additional charge made by Cuban railroads for accessorial services, should be added only once.

The capacity of the average car used in hauling cane from Cuban fields to mills is 60 cubic meters, or 30 metric tons, i. e., 66,138 pounds, and the Cuban cane rates were, and still are, subject as a minimum to capacity of car so that the

average per car charge is based on minimum weight of slightly more than 66,000 pounds. Therefore, the scale adopted for application to Clewiston was to be applied in connection with carload minimum weight of 30 tons, and trainload minimum of 30 cars per train, same as in Cuba. The scale so decided upon was substantially lower than the one previously considered, but no corresponding change was made in the proposed outbound rate on raw sugar to Port Wentworth.

At the close of the December 4, 1928, conference, Mr. Cole stated that offhand the proposed trackage arrangement with its contemplated mileage scale of rates struck him as reasonable, but that he desired to give further study to the [fol. 1021] matter of a trackage arrangement and communicate with the railroads as soon as conclusion could be reached.

After his return, Mr. Cole telegraphed the railroads on December 7, 1928, that according to his understanding the 6 cents for accessorial services added to the Cuban trackage scale was in consideration of the use by the sugar mill of its own cars rather than railroad cars and asked that this amount be deducted from the mileage scale of rates tentatively agreed upon at the Washington conference of December 4th. Although it appeared that the 6 cents added in Cuba was for certain other accessorial matters, the Atlantic Coast Line Railroad and Florida East Coast Railway nevertheless decided that, for the purpose of assisting in the early stages of the Sugar Company's operation, they would reduce the scale previously named by 6 cents per ton, making it 9 cents for hauls of 5 miles or less; 12 cents for 10 miles and over 5 miles; 16 cents for 15 and over 10 miles; 19 cents for 20 and over 15 miles, and 22 cents per ton for 30 and over 20 miles.

Later, Mr. Cole wired on December 31st seeking two additional concessions. First, he asked that the trainload minimum be made only 15 cars for the reason that the Sugar Company might desire at times to load a smaller number of cars than previously agreed. Second, he asked that the carload minimum weight be made only 38,000 pounds since the carload minimum weight of 30 tons would handicap the mill during the early stages of its operation. Mr. Cole was advised that the railroads did not think he should ask them

to reduce their carload or trainload revenue below that yielded on the Cuban basis and that if he desired a reduc-
[fol. 1022] tion in the number of tons per car with corresponding increase in the rate per ton so as to produce the same average per car earnings they were willing to work this out. Similarly, he was told that if he wished a reduction in the number of cars per train for the 1928-29 season only, such readjustment of rates per ton and minimum number of cars per train as to yield per train revenue equivalent to the Cuban basis might be arranged. Mr. Cole replied on January 2nd that, although he had asked for minimum weight of 38,000 pounds, the highest minimum that he could possibly accept would be 24 tons, figuring on 4 tons for the Athey wagons and 6 wagons per car. He said it was extremely vital the first season at least that the trainload minimum be no greater than 15 cars since there would be many cases in which the trains would not carry more than 15 cars, especially from Liberty Point and Bare Beach where the capacities of the loading sidings were then 15 cars each. On January 7th, Mr. Cole was advised by telegraph that the railroads regretted they could not consider any reduction in the minimum weight of 30 tons per car, to which the agreed trackage rates were subject, but, for that season only, they were willing to subject the rates to minimum of 15 cars per train with the understanding that in the following season, when the movement should become heavier, the minimum would be made 20 cars per train.

Mr. Cole continued to urge that the minimum weight be made 48,000 pounds and he was advised on January 8th that the only condition under which the railroads could favorably consider making the weight 24 tons would be on basis of increasing the trackage charge proportionately so that the per car earnings would not be affected. However, at a con-
[fol. 1023] ference held in St. Augustine, Fla., on January 17, 1929, and attended by Mr. Rodenbaugh and Mr. Kirtland, of the Florida East Coast, Mr. C. McD. Davis, of the Atlantic Coast Line, and Messrs. Dahlberg, Burgueries and Cole, of the Sugar Corporation, Mr. Dahlberg made a plea for help during the formative period of the activities of the Southern Sugar Corporation and after much discussion, it was agreed that the railroads would reduce the carload minimum weight from 30 tons to 24 tons per car to be ap-

plicable that year only and without compensating increase in the rates already agreed upon.

The arrangement for operation into Clewiston by the Sugar Corporation of its trains with its own cars, engines and crews over the rails of the Atlantic Coast Line Railroad on basis of a trackage scale of mileage rates six cents per ton less than substantially the equivalent of the scale applicable in Cuba, but subject to minimum weight of only 48,000 pounds instead of 66,138 pounds, as in Cuba, and to minimum of only 15 cars instead of 30 cars per train, as in Cuba, was embodied in a contract between the Atlantic Coast Line Railroad and the Sugar Corporation, dated January 12, 1929, and limited to apply during the 1928-29 season only. It provided that the product of all cane transported on basis of this scale would be shipped out of Clewiston via Atlantic Coast Line Railroad. The mill at Clewiston went into operation on January 14, 1929. At that time the mill at Canal Point was still in operation but no trackage arrangement with the Florida East Coast covering operation into Canal Point was made or considered necessary for operation during the 1928-29 season.

[fol. 1024] In April, 1929, Mr. Cole wrote that the contract would expire in August and said the 1928-29 season's production of cane had been much less than anticipated, largely on account of indirect effects of a hurricane, and that the Sugar Company had, therefore, been unable adequately to test the operation of the arrangement. He sought a renewal of the contract for the next season on the same basis and Mr. C. McD. Davis, then Vice President, Atlantic Coast Line Railroad, consented but advised Mr. Cole that his concurrence must be with definite understanding that the arrangement would cover the 1929-30 season only.

On July 15, 1929, having determined to abandon operation of the sugar mill at Canal Point, certainly for the 1929-30 season, and to enlarge the mill at Clewiston, Messrs. Burgueries and Cole, of the Southern Sugar Company, discussed with Mr. H. N. Rodenbaugh, Vice President, Florida East Coast Railway, the possibility of moving Florida East Coast sugar cane to Clewiston via FEC Ry to Lake Harbor and ACL RR beyond. They desired a trackage arrangement, such as covered by the contract

already executed with the Atlantic Coast Line Railroad covering movement of cane originating at Coast Line stations but were advised that transportation of the cane on any such basis of rates would be entirely out of the question, certainly unless the sugar produced from cane originating on the Florida East Coast could be delivered by the Coast Line to the East Coast at Lake Harbor for movement over its line to Jacksonville, Fla., en route to the refinery at Port Wentworth.

These rates on cane, together with the rate on raw sugar from Clewiston to Port Wentworth via the Lake Harbor [fol. 1025] route, were discussed by Mr. Rodenbaugh, Vice President, and Mr. H. E. C. Hawkins, General Freight Agent, of the Florida East Coast Railway, and Mr. J. W. Perrin, Freight Traffic Manager, Atlantic Coast Line Railroad, with Mr. Cole at a conference in Montreal, Quebec, on July 24, 1929. Mr. Cole endeavored to induce the railroads to permit movement of the Florida East Coast cane to Clewiston in joint line service on basis of the single line scale of trackage rates. He was told that the arrangements with both the Coast Line and the Florida East Coast were strictly single line transit arrangements and that the Florida East Coast felt that if cane grown on its line was to be manufactured at Clewiston, a point not reached by the Florida East Coast, it must not only have the product of the cane returned to it at Lake Harbor, but it ought to apply a trackage scale of mileage rates on the cane about 50 percent higher than applicable from Coast Line stations to Clewiston. However, in an effort to foster the new industry, the Atlantic Coast Line Railroad agreed, not only to apply for its haul from Lake Harbor to Clewiston on the Florida East Coast cane the same mileage scale as on cane originating at Coast Line origins, but also to enter into what was considered the rather novel and liberal arrangement of providing, as a transit arrangement in the contract, that sugar produced from cane originating on the Florida East Coast Railway would be shipped via Atlantic Coast Line Railroad to Lake Harbor, Florida East Coast Railway to Jacksonville and Atlantic Coast Line Railroad to Savannah for movement by the Savannah & Atlanta Railway to the refinery at Port Wentworth.

Finally, after further negotiations, the Florida East

Coast Railway reluctantly abandoned its position that the [fol. 1026] mileage scale for movement of cane from its stations to Canal Point, en route to Clewiston, should be 150 percent of the scale for single line movements and consented to operate the same scale from its stations to Canal Point as the Atlantic Coast Line Railroad would operate from Canal Point to Clewiston. Agreements dated August 21, 1929, were therefore made by the Sugar Company with both the Coast Line and Florida East Coast.

The resulting rates, based on combinations over Lake Harbor of the scales for the distances to and beyond that junction, in comparison with single line scale for the through distances, as sought by Mr. Cole, were as follows:

From	Combination	Single Line Scale
Canal Point	34	22
Runyon	28	22
Dahlberg	24	19
South Shore	21	16
Miami Locks	21	12

Nevertheless, this was an immense concession on the part of the railroads. The minimum weight to govern the mileage scale of trackage rates on the Florida East Coast was made the same temporarily and for the 1929-30 season only, as had been agreed to by Mr. Davis for temporary application on the Coast Line.

The trackage agreements were renewed from year to year by drawing up new agreements at the beginning of each season until the contract for the 1941-1942 season, which, for reasons that I shall outline later, was the last in the series of these cane hauling trackage agreements. So far as the rates were concerned, no change was made in the mileage scales included in any of these contracts, except that the contract covering the 1936-37 season's [fol. 1027] operations, and subsequent ones, provided a further reduction in the rate on cane originating at Canal Point, by far the most important cane shipping origin. As previously stated, the rate from Canal Point was 34 cents per ton, made by combining the Florida East Coast single line scale rate of 22 cents to Lake Harbor and the

Atlantic Coast Line Railroad scale rate of 12 cents beyond. This rate was reduced to 28 cents, the Florida East Coast arbitrarily accepting 18 cents, or 4 cents less than its single line scale, and the Atlantic Coast Line arbitrarily accepting 10 cents, or 2 cents less than its scale. This reduction was made by the railroads in compliance with very urgent request made by the President of the Sugar Corporation during October, 1936.

So far as the carload minimum weights were concerned, however, the story is entirely different. As already stated, it had originally been understood that the mileage scale would be subject to carload minimum weight of 60,000 pounds but that in the original trackage agreement of January 12, 1929, a concession was made under which minimum weight of only 48,000 pounds was provided. That minimum weight continued in force through the 1930-31 season and from an examination of the early records of actual movement from points on the Florida East Coast Railway, the only such records we have, it would seem that, although a few cars were loaded to less than 48,000 pounds, there was no particular difficulty about loading the vast majority of cars not only to, but well in excess of 48,000 pounds.

[fol. 1028] This is substantiated by the statement of four pages now offered as my Exhibit No. 30 (A), which lists every carload of sugar cane moving from Florida East Coast origins to Clewiston during the first week of the 1930-31 season and shows the number of tons in each of the cars. It will be observed that, although the recapitulation on page 4 shows that the average loading during this week was the lightest for any week, except the second and third weeks of the season, loading to less than 24 tons was decidedly the exception to the rule. Many cars loaded well over 25 tons, or 50,000 pounds, and two of them actually loading in excess of 70,000 pounds. The recapitulation on page 4 shows that the average loading for the entire season was 52,940 pounds the average loading by weeks ranging from 47,140 pounds to 54,580 pounds.

However, before the beginning of the 1931-32 season, Mr. R. Y. Patterson, Director of Traffic, Southern Sugar Corporation, asked the Atlantic Coast Line Railroad that the same rates be applied for the approaching season as during the previous season, but that the carload minimum

weight be reduced from 24 tons to 20 tons. The reason offered was that some varieties of cane could not be loaded to 24 tons, also that crooked cane of any variety, on account of its bulk and inability to load compactly, could not be loaded that heavily. The railroads were asked to establish a lower minimum weight on hand-cut than on harvester-cut cane. Mr. Patterson was advised that the rates had originally been made with the thought that they would be subject to minimum weight of 60,000 pounds and the railroads could not consistently reduce their per-car earnings, but if a minimum weight of 20 tons instead of 24 tons was [fol. 1029] desired for application on hand-cut cane there would have to be a compensating increase in the rates so as to preserve the per-car revenue.

Later, Mr. Patterson telegraphed the railroads and said it would be satisfactory to the Sugar Corporation if the carload minimum weight for only the 1931-32 season's movement could be reduced from 24 tons to 22 tons. Notwithstanding previous advices about the necessity of offsetting any reduction in minimum weight with a compensating increase in the rates, the Coast Line decided to make this temporary concession as the Sugar Corporation was in receivership and it was our desire to assist it in its difficulties. Therefore, Mr. Davis advised Mr. Patterson that contract for the 1931-32 season's movement was being prepared on basis of the rates named in the prior contract, but subject to minimum weight of only 22 tons, and it must be understood that such minimum weight, as well as the low per-ton rates, was to be applicable for that season only and that for the 1932-33 season they must be based upon a more remunerative level.

Just before the opening of the 1932-33 season, Mr. Patterson sought reinstatement of the previous rates, but subject to minimum weight of only 20 tons. He said inability to load a number of cars as heavily as 22 tons was due to crooked cane and small barreled cane—not to the method of loading—and that in the approaching season there would be some crooked cane caused by the high winds of August 29, 1932. Mr. Patterson said that cane originating on the Florida East Coast in the previous season had been loaded somewhat more heavily on the average than cane originating at Coast Line stations and that this was due

[fol. 1012]

RESPONDENT'S EXHIBIT No. 27

I. C. C. Docket No. 30140.

Witness: McCormack

Statement Showing Tons Originated, Miles of Road Operated, Revenue Ton Miles and Traffic Density on the L&N RR for Year 1948 in the State of Florida, Compared With Other Southern States.

Line	Commodity Group, C. L.	Tons Originated on L&N RR						
		Florida	Alabama	Georgia	Mississippi	Tennessee	Kentucky	Total
1	Products of Agriculture	44,289	200,032	4,245	269	215,631	466,920	
2	Animals and Products	439	11,173	432	1,727	52,918	124,557	
3	Products of Mines	97,401	8,180,045	396,942	1,057	3,916,872	33,158,826	
4	Products of Forests	353,762	1,054,187	274,386	67,782	278,905	441,294	
5	Manufactures and							
6	Miscellaneous	201,515	4,243,890	51,338	69,407	2,180,493	1,092,413	
7	Forwarder Traffic	17	228	10	—	—	62,926	
8	TOTAL	697,423	13,689,555	727,353	140,212	6,644,819	35,346,936	
9	Miles of Road Operated							
10	at Close of Year	242.77	1,163.73	215.40	73.75	892.80	1,817.91	4,466.36
11	Percent	5.51	26.41	4.89	1.67	20.26	41.26	100.00
12	Revenue ton miles	160,444,000	3,062,164,000	499,736,000	265,502,000	2,478,713,000	9,128,470,000	15,595,029,000
13	Percent	1.03	19.64	3.20	1.70	15.89	58.54	100.00
14	Revenue ton miles per							
15	Mile of Road	660,889	2,631,335	2,320,037	3,600,027	2,776,336	5,021,499	17,010,123
16	(Traffic Density)							
17	Percent	3.89	15.47	13.64	21.16	16.32	29.52	100.00

Authority

18 L&N RR Annual Report to the State Commissions in states shown.

L&N RR Traffic Department

June 21, 1949

[fol. 1013]

ICC Docket 30140

RESPONDENT'S EXHIBIT NO. 28

Witness: McCormack

Statement Showing the Operating Ratio of L. & N. R. R. on Florida Traffic Compared with All Traffic on L&N R. R. Also a Comparison of the Number of Cars and Tons Carried in Florida vs. All L&N R. R. Traffic for Years 1945 and 1948

	Within the State of Florida				All Traffic	
	1945	1948			1945	1948
Operating Revenue	$3,930,658	$3,284,682			$196,541,491	$207,271,683
Operating Expenses	4,279,415	4,324,063			146,481,016	169,453,493
Operating Ratio	108.87%	131.64%			74.53%	81.8%
			% of all traffic			
			1945	1948		
Number of Cars	61,240	61,219	3.53	3.49	1,732,369	1,754,879
Number of Tons	2,089,706	2,027,159	2.98	2.68	70,235,764	75,777,447

L&N RR Traffic Department

June 21, 1949

[fol. 1030] to the greater percentage of acreage in the Florida East Coast territory planted to so-called big barrel cane than in Coast Line territory. He said, however, that the Sugar Corporation would gradually discontinue the production of "small barrel" cane and that within two years its production would have been practically discontinued, so that, although the deficit under the minimum weight during the 1931-32 season had been considerable, it would be less in the 1932-33 season and still less in the 1933-34 season even if minimum weight of 22 tons should be continued.

Having consulted the Florida East Coast Railway, whose interest was equal to, if not greater than, that of the Coast Line, Mr. Davis advised Mr. Patterson that the railroads could not agree to a further reduction in the carload minimum weight unless such reduction was accompanied by a proportionate increase in the rates per ton so as practically to preserve the per-car earnings which were minimum figures. Therefore, the 1932-33 season's contract did not provide for minimum weight of 20 tons; however, it did not revert to the minimum weight of 24 tons, as had been contemplated when the reduction to 22 tons was made as a temporary measure at the beginning of the 1931-32 season, but provided for the same minimum of 22 tons as in that season.

[fol. 1031] Obviously, there could not have been very much necessity for a minimum weight of 20 tons or even 22 tons, certainly on cane originating at Florida East Coast Railway points, in the 1932-33 harvest season for the reason that, as shown by my Exhibit No. 31-(B), the average loading of cane originating on the Florida East Coast during that season was 49,620 pounds, ranging from an average of 47,260 pounds in the last week of the season to a high of 56,600 pounds in the period February 5th to February 11th. In only one of the 19 weeks of the season did the loading fail to average as much as 48,000 pounds and in that week it failed by only 740 pounds.

Mr. Patterson again approached the railroads before the opening of the 1933-34 harvest season for a reduction to 20 tons in the carload minimum weight, stating that "small barrel" cane was likely to be crooked and also light in weight. He said that type of cane was being eliminated

rapidly but that minimum weight of 20 tons was sought for the 1933-34 season because of inability of certain light and bulky types of cane to be loaded as heavily as 22 tons and that even when loaded to 22 tons the extra care in so loading and packing it brought about extra labor expenses, also extra costs for unloading, and it was the desire of the Sugar Corporation to effect a saving of the expense of such auxiliary operations, which auxiliary costs he said were penalizing the Sugar Company more than the tariff penalties under the cane hauling contracts.

Later, Mr. Patterson renewed his appeal, this time basing it largely on the fact that the tropical hurricane of September, 1933, had bent the cane to such an extent that [fol. 1032] it would not be possible to load as compactly as if it were straight. This appeal was supplemented by letter of October 23rd from Vice President and General Manager J. J. Harrington, of the Sugar Corporation, who wrote that the cane fields had been visited on September 3rd and 4th with a violent tropical disturbance which had affected all of the fields; that practically all of the cane had been blown onto the ground and that, although subsequent favorable weather conditions had restored the cane, with few exceptions, to a standing position, all of the stalks were crooked which would add to the harvesting expense and make it particularly difficult to obtain loading of 22 tons in the 1933-34 season.

Under the circumstances, although the 1933-34 season's contracts, dated November 28, 1933, were made to provide for minimum weight of 22 tons, same as in the two preceding seasons, they were supplemented or modified by letters which provided that, beginning with 6:00 A.M. December 15, 1933, and continuing through January 31, 1934, the carload minimum weight would be 20 tons with no change in the rates and that, effective February 1, 1934, and continuing for the remainder of the season, the minimum weight of 22 tons named in the contracts would be observed.

I shall not burden the record with an account of the negotiations which were conducted by representatives of the Sugar Corporation at the beginning of each season, but will content myself with the statement that a request for renewal of such arrangement was made annually as

long as the cane was transported under trackage agreements and each of the contracts through that for the 1941-42 season provided for minimum weight of 22 tons, or [fol. 1033] 44,000 pounds, but was supplemented or modified by letters reducing the minimum weight for the period from the begining of the season through January 31st of that season to 20 tons with the 22-ton minimum named in the contract to govern for the remainder of the season. The railroads were never satisfied with either the rates or the reduced minima to which they had been subjected, always as a temporary measure, and generally with the very firm intention of increasing them before another season. However, any move to increase either the rates or the minima was forestalled each season by the plea that the low rates and the low minimum weights were absolutely necessary for the approaching season and the more of these demands that were acceded to the more difficult it became to force the issue and bring about the increases that railroad traffic people so strongly felt to be warranted.

Along about the first part of 1941, the Brotherhoods of Locomotive Firemen and Enginemen and of Railroad Trainmen on the Florida East Coast Railway became dissatisfied with the fact that the sugar cane trains were being operated by employees of the Sugar Corporation rather than by railroad union employees and instituted proceedings before the National Railroad Adjustment Board with view of having the arrangement discontinued. In its Awards Nos. 5826 and 5827 of June 30, 1941, the National Railroad Adjustment Board sustained the protests as to work performed on the tracks of the Florida East Coast Railway connected with operations of the United States Sugar Corporation. The corresponding labor organizations representing Atlantic Coast Line Railroad employees registered similar protests following which understanding [fol. 1034] was reached that whatever decision might be made with respect to the situation on the Florida East Coast Railway would also apply to the Coast Line.

The awards of the National Railroad Adjustment Board were appealed by the Sugar Corporation to the Courts, but in anticipation of the possibility of failure the Sugar Corporation asked that a clause be incorporated in the

trackage agreement for the 1941-42 season to the effect that in the event requirement should be made that train or trains to be operated under the contract must be manned by a full crew or crews other than employees of the Sugar Corporation, then the latter might at its option thereupon terminate the agreement.

Also, apparently anticipating that the railroad labor organizations would prevail in their case, the officers of the Sugar Corporation appealed to the railroads to take over the entire transportation service and perform it with railroad equipment and railroad labor, but that the railroads use the cane cars owned by the Sugar Corporation, paying it on a mileage basis for such use. It was realized that this would necessitate publication of a tariff of freight charges and that because of operation of the trains by railroad labor and with railroad-owned or leased equipment the freight charges so published must be higher than the mileage scales of trackage charges theretofore existing under the contracts. A conference between representatives of the two railroads, on the one hand, and the President of the United States Sugar Corporation, on the other hand, [fol. 1035] was held in New York on November 17, 1941, and a mileage scale of net transit rates to be published in tariff form was agreed upon. The best guides or indices by which the parties could be governed in determining what would be proper charges for this service were the mileage scales of rates on sugar cane then applicable in the State of Louisiana, where, for many years, cane had been produced on a large scale and moved to the established sugar mills in that territory.

[fol. 1036] Exhibit No. 32(C), two pages, shows on the first page the mileage scales of rates on sugar cane for distances of 40 miles or less than in effect in Louisiana. At that time there were two scales. One, subject to minimum weight of 30,000 pounds, had been prescribed by the Louisiana Commission and the other, subject to minimum weight of 50,000 pounds, had been voluntarily established by the railroads as a temporary measure and subject to expiration date. The scale of voluntary rates, minimum weight 50,000 pounds, did not extend to distances beyond 20 miles.

The third and fourth columns of rates on the first page of the exhibit are the mileage scale rates, subject to carload

minimum weight of 44,000 pounds, that were offered by representatives of the Atlantic Coast Line Railroad and Florida East Coast Railway to the President of the Sugar Corporation. There was a single line scale for application from Atlantic Coast Line origins and a joint line scale, 15 cents per ton higher, for application from Florida East Coast origins. It will be observed that the single line scale rates offered to the Sugar Corporation were substantially less for all distances than the rates prescribed by the Louisiana Commission for use in connection with the minimum weight of 30,000 pounds. In fact, for all distances except 6 miles, they were lower by amounts ranging from 3 cents to 13 cents per ton than even the voluntarily established short-haul rates in Louisiana subject to minimum weight of 50,000 pounds. Incidentally, there was, and is, no movement of sugar cane to Clewiston from any point located six miles away so that the one exception just mentioned was apparent but not actual. [fol. 1037] The exhibit shows that for joint hauls from Florida East Coast Railway stations the rates offered the Sugar Corporation for distances of 30 miles and less, i.e., the distances over which the cane actually moves, ranged from 3 cents to 18 cents per ton less than the rates prescribed by the Louisiana Commission for single line hauls of corresponding lengths with the sole exception that for distances of 25 miles and over 20 miles the proposed joint line Florida rate was 2 cents per ton higher than the single line Louisiana rate.

The President of the Sugar Corporation objected to payment of a higher rate for joint line than for single line hauls of like distances and after some consideration the railroad representatives concluded to make the very great concession of applying the single line scale for joint line, as well as for single line hauls. Furthermore, as indicated by the footnote on page 1 of the exhibit, they made a still further concession before the tariff was published and subjected the agreed rates, both single-line and joint-line, to minimum weight of 40,000 pounds for that part of each season from its beginning through the succeeding January and 44,000 pounds for the remainder of the season, although it had been contemplated that the minimum would be 44,000 pounds throughout the season.

Page two of the exhibit shows the rate situation from the standpoint of the actual cane shipping origins in Florida rather than from the standpoint of a mileage scale basis. The first two columns of rates are those that would have been published had the Louisiana single line scales been observed in making either single line or joint line rates in [fol. 1038] Florida. The third column shows rates for single line movements from Coast Line origins and joint line movements from Florida East Coast origins predicated upon the mileage scale agreed upon for single and joint line application to Clewiston. It will be observed that from Coast Line origins the rates actually published were from 23 to 33 cents per ton less than if they had been based on the Louisiana prescribed scale and from 3 to 8 cents per ton less than they would have been even if predicated on the temporary Louisiana scale which was subject to minimum weight of 50,000 pounds. From Florida East Coast Railway origins the rates established for *joint line* hauls ranged from 13 to 28 cents per ton less than rates prescribed for *single line* hauls of corresponding distances in Louisiana. The Louisiana temporary scale, subject to minimum weight of 50,000 pounds, did not extend to distances as far as those from Runyon and Canal Point to Clewiston but for the shorter distances from Dahlberg and intermediate origins the rates actually established for *joint line* hauls were from 3 to 8 cents less than the Louisiana *single line* basis, subject to minimum weight of 50,000 pounds.

The tariff of net transit rates so agreed upon was filed with the Florida Commission, effective February 12, 1942, but the Sugar Corporation did not discontinue operation of its trains with its own crews and the railroads did not inaugurate their own service and begin operating under the tariff until 12:01 A.M. February 26, 1942.

I may say at this point that, as was brought out at the hearing of ICC Docket No. 30087, United States Sugar Cor- [fol. 1039] poration v. Atlantic Coast Line Railroad Company, et al., before Commissioner Alldredge in St. Petersburg, Fla., on January 6 and 7, 1949, and admitted by Witness D. B. Green, the railroads made an error when they showed on the title page of the Tariff of Net Transit Rates, effective February 12, 1942, that it applied only on Florida intrastate traffic and filed it with the Florida Commission

rather than with the Interstate Commerce Commission. This was true, since the outbound movement of sugar produced from the cane moving into Clewiston on these net transit rates was and always has been to Port Wentworth, Ga., an interstate destination. However, being convinced of their error in this respect, the railroads promised Commissioner Alldredge that they would file the tariff with the Interstate Commerce Commission. This they did by Atlantic Coast Line Railroad ICC No. B-3219, Freight Tariff No. 91-50-O, to become effective April 13, 1949, and reissued by ICC No. B-3220, Freight Tariff No. 91-50-P, also filed to become effective April 13, 1949. The reissue was necessitated by a minor situation in which the Interstate Commerce Commission's Bureau of Tariffs felt that ICC No. B-3219 failed to comply fully with one of the tariff rules.

Upon protest of the U. S. Sugar Corporation, these tariffs were suspended by order of the Interstate Commerce Commission in I&S Docket No. 5646. I understand the protest was due principally to the fact that, whereas Freight Tariff No. 91-50-N does not subject the rates therein to either Ex Parte 162, Ex Parte 166 or Ex Parte 168 increases, authority to do so never having been granted by the Florida Commission, the rates therein were subjected to [fol. 1039a] these increases when published as interstate rates in Tariffs 91-50-O and 91-50-P, ICC Nos. B-3219 and B-3220.

[fol. 1040] The history of the net transit rates on sugar cane to Clewiston from the time of their publication and filing with the Florida Commission until the present day can be dealt with more intelligently if we make two divisions, one treating with rates and the other with carload minimum weights. The statement now offered as Exhibit No. 33(D) shows the net transit rates which became effective February 12, 1942, and all of the subsequent changes therein, together with the rates which we are proposing. It will be observed that the present rates are exactly the same as those originally published in February, 1942, and arrived at as I have already explained. During the period March 18, 1942, through May 14, 1943, and again during the period July 1, 1946, through February 2, 1947, temporary increase of 3 percent made under Ex Parte 148, or the corresponding docket of the Florida Commission, were in effect, but, as

shown by the footnote, the Florida Commission required the railroads to withdraw the rates as so increased 3 percent and reinstate the original rates, effective May 3, 1947. The Florida Commission has denied the petitions of the railroads for increases in these rates corresponding to the increases granted by the Interstate Commerce Commission under Ex Parte 162 and 166. The rates in the last column are nothing more or less than what the rates as of February 12, 1942, and at present in effect, would be if subjected to the same measure of increase as granted by the Interstate Commerce Commission in Ex Parte 162 and Ex Parte 166.

[fol. 1041] So far as the carload minimum weights are concerned, that story is told by the memorandum of two pages which I now offer as my Exhibit No. 34(E), which shows in chronological order the provisions of the Sugar Cane Transit Tariff and its subsequent reissues with respect to carload minimum weights governing the rates to Clewiston. All of the reissues of the tariff are included in the memorandum, although several, for example Tariff 91-E and 91-F, were not occasioned by any change in the carload minimum weight.

[fol. 1042] Some of the weights, particularly the weight of 44,000 pounds shown as applying from June 2 of any given year through the end of the season, had no practical application for the reason that, as yet, no cane grinding season has continued as late in the year as June 2nd. For this reason, I offer as my Exhibit No. 35 (F) a memorandum showing for each of the harvest seasons since publication of the tariff, i. e., 1941-42 season through 1948-49 season, the carload minimum weights governing the net transit rates, also the dates of opening and closing of each season. It will be observed that the minimum weights of 40,000 pounds from the beginning of the season through January 31st and 44,000 pounds from February 1st through the end of the season were continued through the first three seasons after the tariff of net transit rates went into effect. During this time no complaint was made nor was question of any kind raised concerning the minimum weight, but on September 1, 1944, Mr. R. Y. Patterson, of the Sugar Corporation, advised the Atlantic Coast Line Railroad and

Florida East Coast Railway that, although the carload minimum weights just mentioned had very nearly fit the situation in past seasons, it had been impossible since the beginning of World War II to obtain sufficient labor to load the Athey wagons in the cane fields in the same manner as had previously been the custom. He said that, instead of loading the cane into the wagons by hand as in previous seasons, resort would have to be had to mechanical loading devices and that cane, as cut and piled in the field, would be loaded by drag lines or by small machines operating in [fol. 1043] somewhat the same manner as a drag line but using a skeleton bucket. He said that the position of cane loaded into wagons in this way could not be controlled since it would be in various positions and not stacked by hand as theretofore, which meant that the same cane, when transferred from wagons to cars at loading hoists, would be more or less matted and the stalks would not be laid straight or compactly. In other words, there would be more voids or air spaces between the stalks, thus making for lighter carloading. In view of this effect of the labor shortage caused by the war, the railroads were asked to make some concession by way of reducing the governing carload minimum weight but Mr. Patterson stated he would not expect an increase in the rates, assuming the reduction in minimum weight would be made without reference to the freight rate.

Mr. Patterson was reminded that in agreeing to these low rates at the November 17, 1941, conference the railroads naturally took into consideration the per-car earnings which were measured not only by the rate but by the attendant minimum weight and that in order to maintain the per-car earnings then in contemplation the rates should be increased in an amount to correspond with whatever reduction might be made in the carload minimum weight. Railroad representatives delegated to investigate the situation reported that many cars of cane loaded by machinery were arriving at the mill with full tonnage while others, originating at the same points, were arriving with light tonnage which indicated the possibility of loading to full tonnage with mechanical devices if sufficient care should be taken. It was reported that there was not sufficient variation in the character of the cane to justify such varia-

[fol. 1044] tion in the average loading and that the fluctuation between carload weights was attributable generally to the fact that some loading crews were more efficient or were more carefully supervised than others.

However, having first consulted the Florida East Coast, Mr. R. J. Doss, Vice President, Atlantic Coast Line Railroad, went to Clewiston on November 3, 1944, and in conference with Mr. Patterson agreed that purely as a temporary measure and for the 1944-45 season only, the carload minimum weight would be reduced to 38,000 pounds as a help-out to the Sugar Corporation in consideration of the labor difficulties it was then having and without any change in rates. He did this notwithstanding the justification for a corresponding rate increase if there was to be any reduction in the carload minimum weight. Joint petition was filed by Atlantic Coast Line Railroad and Florida East Coast Railway with the Florida Commission for relief from the Florida Long and Short Haul Law and the Florida Commission's Freight Rule 2. That petition read in part as follows:

> "The present rates are considered by your petitioners as unusually low and are justified only in the light of the unusual circumstances and conditions surrounding the movement and having in mind particularly that the sugar cane, at the time the rates were established, could be loaded to or in excess of 40,000 pounds per car during part of the season and 44,000 pounds per car during the balance and, further, that the rates apply when in trainload lots of not less than 15 cars per train; also that there is a subsequent and further movement by rail of the product of the sugar cane. In view of the present shortage of manpower due to the war and the consequent necessity of loading the preponderance of the movement by mechanical devices, your petitioners are willing to continue the existing rates and the rules and regulations in connection therewith as published in the tariff previously referred to, but only as a temporary measure and subject to an expiration date of June 1, 1945, to change the carload minimum weights to 38,000 pounds."

[fol. 1045] As shown by the exhibit, however, the 38,000

pound minimum was again published for application in the 1945-46 season. Such publication was the result of similar plea from the Sugar Corporation and similar petition filed with the Florida Commission and containing statement substantially same as the one I have just read.

In September, 1946, Mr. Patterson asked that the minimum weight for the approaching season be made only 36,000 pounds for application from the beginning of the season until January 1, 1947, and 38,000 pounds from January 1st through the remainder of the season. He said that in the previous season cars had not been loaded to an average of 38,000 pounds or more until well after the season had begun and the season's penalty against the Sugar Corporation for loading less than the minimum had been $9,813.75. The Coast Line and East Coast conferred and concluded to assist the Sugar Corporation in this respect for still another year although it was felt that an increase in the rates corresponding to the reduced minimum should be made.

Mr. Patterson again made a similar request just before the 1947-48 season and again the railroads decided to accommodate the Sugar Corporation, although Mr. Patterson was advised that in view of the attitude of the United States Sugar Corporation in opposing application of the Ex Parte 162 and Ex Parte 166 increases to the extremely low rates on sugar cane to Clewiston there had been reluctance to comply with his request and it was hoped the liberality of the railroads was appreciated. Mr. Patterson was told that [fol. 1046] when first agreed upon these rates were to be subject to minimum weight of 44,000 pounds and he could be assured that they would not have been made as low as they were if it had not been the definite understanding of the railroads that the carload minimum would be 44,000 pounds.

The usual pre-season request from the Sugar Company for temporary reduction in the carload minimum weight was not received before the beginning of the 1948-49 season. In fact, it was not received until Mr. Patterson telephoned the railroads on December 20, 1948, or sixty days after the season had begun, and requested that the previous season's minima be reinstated for the 1948-49 season. At that time

he was advised that, in view of the extremely low measure of the rates, also in view of the action of the United States Sugar Corporation in having prevented any increases in the rates on sugar cane to Clewiston under Ex Parte 162 and Ex Parte 166, as well as the fact, I think, that the war induced labor shortage which had necessitated resort to mechanical loading devices had pretty well come to an end, the railroads could not afford to restore the reduced minima which had been so maintained since the 1945-46 season. Accordingly, the governing carload minimum weights throughout the 1948-49 season were, and now are, 40,000 pounds from the beginning of the season through January 31st and 44,000 pounds for the remainder of the season.

[fol. 1047] The Sugar Company has filed with the Florida Commission a formal complaint attacking these carload minimum weights and alleging "the maximum space capacity of complainant's sugar cane cars permits a maximum loading of 36,000 pounds from October to December 31st and 38,000 pounds from January 1st to the end of the shipping season; and the space limit of the cars prevents and prohibits complainant from loading more than those respective weights of sugar cane in its cane cars."

Anticipating that such contention might be made in the instant proceedings, I have made a complete and careful analysis of the actual performance of all of these cars from the standpoint of tonnage of cane transported to Clewiston during the first month of the first and second period each of the 1948-1949 season's movement. I selected November, 1948, as the month of the first period, i.e., from the beginning of the season through January 31st while the carload minimum weight was 40,000 pounds, for the reason that if the cars could be loaded to or above 40,000 pounds during November then certainly they could be loaded to or above that minimum during the remainder of the first period. This is for the reason that ordinarily the cane becomes heavier as the season progresses.

I had the waybills covering every single shipment examined and a tabulation made showing car number and weight of the contents of each car used. There are 469 cars in the service but the study disclosed that during November, 1948, five of these cars certainly, and possibly a sixth, were not used in line haul service during the month of November.

[fol. 1048] However, of the remaining 463 cars it developed that not a single one failed to carry 40,000 pounds or more cane to Clewiston on at least two occasions. Exhibit No. 36 (G) shows in the first block of figures the findings revealed by the November study. It shows that the smallest number of trips loaded to 40,000 pounds or over made by any of the cars was two and that only two cars made as few trips as two loaded to or above the minimum. Seven of the cars made three trips and ninety of them made eight trips. One made no less than sixteen trips during November with 40,000 or more pounds of cane. The 463 cars made a total of 3,599 trips or an average of 7.77 trips per car in November loaded to or above the minimum weight of 40,000 pounds.

Effective February 1, 1949, the carload minimum weight became 44,000 pounds instead of 40,000 pounds. The second block of Exhibit No. 36 (G) therefore analyzes the movement of the 469 cars in the sugar cane service from the standpoint of actual loading performance during the month of February, 1949. The findings are that not a single one of these 469 cars failed to make at least two trips loaded to 44,000 pounds or more. As a matter of fact, only one car made as few as two trips, only one other made as few as three trips and only one other as few as four trips with 44,000 pounds or more. Four hundred sixty-two of the 469 cars made more than five trips in the short month of February with 44,000 or more pounds of cane. In fact, on many of the trips they carried more than 50,000 pounds and there were a few trips with more than 60,000 pounds. It will be observed that [fol. 1049] 84 cars made ten trips, 85 made eleven trips and 70 made twelve trips, while one made no less than nineteen trips loaded to 44,000 pounds or more. The 469 cars in the service made a total of 5,014 or an average of 10.69 trips in February loaded to or above the minimum weight.

A great deal of care was taken to insure accuracy in the study that revealed these facts which, in the light of the allegations made in the complaint before the Florida Commission, would seem to be rather startling. The figures were compiled by two of our most careful clerks, one of whom called the car numbers and weights from the waybills to the other who wrote them down and then, before passing to the next waybill, the clerk who had written them down read

them back to the other in order to be absolutely certain that there had been no error in drawing off the figures.

[fol. 1050] Lest the inference might be left that most of these cars were loaded only to or slightly above the minimum weight, I have shown in Exhibit No. 37 (H) the details of 15 representative cars among the total of 469 covered by the study. Incidentally, the car numbers run consecutively from No. 101 to 569, inclusive. It will be noted that although naturally some of the cars were loaded only to the minimum or slightly in excess, many others were loaded from one to twenty tons in excess of the carload minimum weight.

[fol. 1051] Exhibit No. 38 (I), three pages, shows the number of cars, the actual weight and the average weight of all sugar cane transported by Atlantic Coast Line Railroad and Florida East Coast Railway to Clewiston during the entire 1948-1949 harvest season, dividing same as between Florida East Coast and Atlantic Coast Line Railroad origination, as between the first period, when the minimum weight was 40,000 pounds, and the second period, when the minimum weight was 44,000 pounds, and also by months. Page one covers all cars, both those loaded above and below the minimum weights, while page two shows the performance of those cars in the movement that were loaded to or above the minimum weight and page three shows the performance of those cars that were loaded to less than the minimum weight. It will be noted from page one that the 1948-49 season's movement amounted to 42,907 cars of which 14,516 originated on the Coast Line and 28,391 on the Florida East Coast. During the first period when the minimum weight was 40,000 pounds the movement amounted to 28,267 cars, loaded to an average of 41,399 pounds. During the second period, when the minimum weight was 44,000 pounds, the movement amounted to 14,640 cars, loaded to an average of 43,817 pounds, or 183 pounds less than the minimum weight. The 42,907 cars handled during the entire season were loaded to an average of 42,224 pounds. Page two shows that, of the 24,007 cars loaded to or above the carload minimum weight, 16,947 cars, averaging 44,492 pounds, moved during the first period, when the minimum weight was 40,000 pounds, and 7,060 cars, loaded to an average of 47,707 pounds, moved during the second period when the minimum weight was 44,000 pounds.

[fol. 1052] Page three shows that, of the 18,900 cars loaded to less than the minimum weight, 11,320, averaging 36,769 pounds, moved during the first period when the minimum weight was 40,000 pounds and 7,580, loaded to an average of 40,194 pounds, moved during the second period when the minimum weight was 44,000 pounds.

According to page 1, the total tonnage transported during the entire season was 1,811,711,000 pounds, of which, according to page three, 720,900,100 pounds, or 39.79 percent was moved in cars that did not quite come up to the carload minimum weight. In this connection, sight should not be lost of the fact that the reason for 39 and a fraction percent of the tonnage having been loaded to slightly less than the minimum weight was the direct result of the loading operation being performed by labor saving and expense saving mechanical devices as contrasted with hand labor, by the use of which there would have been no difficulty about getting well in excess of the published minimum weight in all of the cars.

[fol. 1053] It may seem, offhand, that the failure to load 18,900 cars in one season quite as heavily as the carload minimum weights would penalize the shipper rather seriously. To determine whether or not this was the case, I have prepared and now offer as my Exhibit No. 39(J) a statement of three pages analyzing the 1948-49 season's movement from the standpoint of the rate penalty payable for the use of mechanical equipment and thus loading a fraction over 39 percent of the tonnage in cars that carried somewhat less than the minimum weight. The first page of this statement shows the number of cars loaded to somewhat less than the minimum weight that moved during the first period, i. e., October 26, 1948, to January 31, 1949, inclusive. It also shows the actual weight transported in these cars in comparison with the carload minimum weight and, in the last column, the deficit in weight below the minimum. Page two makes a similar showing as to the movement during the second period, i. e., February 1st to March 22, 1949, inclusive.

In the upper half of page three I show, in the first column, the total number of cars on pages one and two, that is, for both the first and second periods of the entire season, loaded to less than the minimum weight. In column two have been shown the totals of the weight deficits for the first and sec-

ond periods shown in the last columns on pages one and two. Because all rates are stated in cents per net ton, column three converts the figures in column two into units of net tons. The rate to Clewiston at time of movement is shown in column four and in the next column are shown the penalties in dollars for failure to load to the minimum, [fol. 1054] divided among each of the origins. The total for the season, it will be noted, was $14,740.26. From the last column it will be observed that, stated in cents per car, this was an average penalty of 78 cents for the movement as a whole, or rather for only that part of the movement that was loaded to less than the minimum weight. The penalties so applicable on the cane from the respective shipping points ranged from zero at Shawnee and an average of 34 cents per car at Ritta to 99 cents per car at Runyon. Please bear in mind that these average penalties per car were not predicated upon the entire movement of 42,907 cars, but only upon the 18,900 cars that were loaded to less than the minimum weight. Had all of the cars in the movement been divided into the penalty charge it follows that the average per car penalties would have been less than half of the figures shown.

The bottom half of page three is similar to the top half except that, whereas the top half shows the total and average penalty payments actually due on basis of the rates and minimum weights in effect during the 1948-49 season, which rates as previously explained do not include increases under either Ex Parte 148, Ex Parte 162 or Ex Parte 166, the bottom half shows what the penalties would have been on the same movement had the rates proposed by the railroads, i. e., the rates in the upper half of the page, increased 15 percent under Ex Parte 162 and further increased 25 percent under Ex Parte 166, been in effect. It will be observed that on this basis the total penalty per car on the cars loaded [fol. 1055] to less than the minimum weight would have been only $1.13.

I think the information contained in Exhibits 36(G) to 39(J), inclusive, should enable the Commission to determine whether or not the present carload minimum weights are too high, but I think that these and other exhibits which I have filed, or will file, should also enable the Commission to determine whether, in the event it should be decided that some

reduction in the carload minimum weight is in order, there ought to be a compensating increase in the rates. In my outline dealing with the historical background of these rates I have shown that on numerous occasions when the Sugar Company besought the railroads to reduce the minimum weight the railroads indicated a willingness to do this provided the Sugar Corporation would agree to a compensating rate increase, thus preserving the per-car revenue which has always been considered by the railroads as being on an extremely depressed basis.

[fol. 1056] In order that a better idea may be had as to just what carload minimum revenue is applicable and has been applicable on this traffic in the eight harvest seasons since publication of the tariff of net transit rates filed with the Florida Commission, I offer as my Exhibit No. 40(K) a statement of one page showing in chronological order the carload minimum charges applicable to Clewiston from all of the origins from which cane was shipped to Clewiston during the 1948-49 season.

My Exhibit No. 33(D) is a chronological statement of the rates and my Exhibit No. 35(F) is a chronological statement of the carload minimum weights. Exhibit No. 40(K) is the product of the two, the changes in carload minimum charges having resulted in some cases from a change in the rates and in others from a change in the minimum weights. An examination of the exhibit will disclose that the carload minimum charges in effect during the 1948-49 season and still in effect range between the absurdly low figures of $6.00 and $12.10 per car. They are actually lower, because the rates are the same but the carload minimum weights are lower, than made effective for the 1941-42 season as result of the compromise made with the President of the Sugar Corporation at the November 17, 1941, conference.

The figures at the foot of the page show what the carload minimum charges would be if the present rates were increased under Ex Parte 162 and Ex Parte 166 as proposed by the railroads. Even on this basis railroads would earn [fol. 1057] during the first period of the season amounts ranging from only $8.80 to $15.80 per minimum car of 40,000 pounds and, during the second period, amounts ranging from only $9.68 to $17.38 per minimum car of 44,000 pounds. Even the carload minimum charge published in Rule 13 of

Consolidated Classification, Agent R. E. Boyle's ICC No. 106, is $25.00 per car, including Ex Parte 162 and 166 increases, and it is subject to the Ex Parte 168 interim increase of 6 percent. That minimum charge, however, does not apply on sugar cane.

[fol. 1058] Having shown in my Exhibit No. 40(K) the minimum per car charges in effect during the 1948-1949 harvest season in comparison with the minimum per car charges proposed for application in future harvest seasons, I think it would now be well to show the freight revenue on the actual movement during the 1948-49 harvest season on basis of the rates then and now in effect compared with what the revenue would have been had those rates been revised to include the Ex Parte 162 and Ex Parte 166 increases, i. e., the rates we are now proposing. This information is set forth in the statement of one page now offered as my Exhibit No. 41(X). It shows the actual movement for the 1948-49 season divided according to origins. The tonnage shown in the first column, opposite each origin, represents the total weight of cane in all of the cars shipped except that if in any case the actual loading was less than the carload minimum weight then the carload minimum weight for that carload rather than its actual weight has been included in the total.

The statement shows the present rates from each of the origins to Clewiston and the revenue arrived at by applying those rates to the tonnage. In the last block have been shown the proposed rates, that is, the present rates plus Ex Parte 162 and Ex Parte 166 increases, and revenue resulting from application of such rates to the tonnage.

It will be noted that the applicable revenue on last season's movement of 938,565 tons was $412,646.82, an average transportation charge of just under 44 cents per ton. Had the rates in effect last season included the Ex Parte 162 and Ex Parte 166 increases the applicable revenue would have been $595,713.18, an average of just under 63½ cents per ton. In other words, on this movement of 938,565 tons the Atlantic Coast Line Railroad and Florida East Coast Railway were deprived of $183,066.36 by reason of the Florida Commission denying authority to apply these Ex Parte increases.

[fol. 1059] I now offer as my Exhibit No. 42(L), a state-

ment showing the mileage scales of rates on sugar cane prescribed by the Florida Railroad Commission many years ago and now published in the intrastate local tariffs of the Atlantic Coast Line Railroad and Florida East Coast Railway. These are the rates that would apply in the absence of the net transit rates on sugar cane under consideration in these proceedings. The scales shown in Exhibit No. 42(L) would apply, however, only on traffic from Atlantic Coast Line Railroad stations. On traffic from Florida East Coast Railway stations the rates would be predicated on full combinations of these scales for the respective distances of the Florida East Coast Railway to Lake Harbor and of the Atlantic Coast Line beyond. I should also like to remind you that even these rates, although considerably higher than our net transit rates, have not yet been increased under Ex Parte 148, Ex Parte 162 or Ex Parte 166, but are the same rates as were in effect back in 1938.

[fol. 1060] Since accurate comparisons with the actual rates to Clewiston, about half of which are for joint hauls, cannot be made by reference to single line scales as shown in Exhibit No. 42(L), I now offer as my Exhibit No. 43(M) a statement showing what the actual rates from the Florida shipping points to Clewiston would be on basis of the mileage scale shown in Exhibit No. 42(L) from Coast Line stations and on basis of combinations thereof from Florida East Coast Railway stations. These rates also do not include and are not subject to any of the increases made under Ex Parte 148, Ex Parte 162 or Ex Parte 166. However, it will be seen that from all Coast Line stations the rate prescribed by the Florida Commission, which would be applicable in the absence of the net transit rates here under study, would be 71 cents per ton as compared with present rate of 30 cents and proposed rate of 44 cents from the nearby Coast Line stations and present rate of 40 cents and proposed rate of 58 cents from the most distant Coast Line stations. From the nearer Florida East Coast stations, the rate prescribed by the Florida Commission is 128 cents per ton as compared with present rate of 35 cents and proposed rate of 50 cents, while from Canal Point the Florida Commission's prescribed rate is 138½ cents as compared with present rate of 55 cents and proposed rate of 79 cents. Bear in mind that, as shown by the note on Exhibit 42(L), the

rates so fixed by the Florida Commission are not local rates in the ordinary sense, but are themselves in the nature of transit rates and applicable only when the product of the cane is shipped from Clewiston via Atlantic Coast Line Railroad. If the sugar produced from the inbound cane is not shipped out via ACL the rates just named are doubled, ranging from 142 cents per ton from Coast Line stations to 277½ cents per ton from Canal Point on the Florida East Coast Railway.

[fol. 1061] I think unquestionably the best standard by which to judge the reasonableness of the rates and per-car revenues on sugar cane from South Florida points to Clewiston is to compare them with the rates and revenues on sugar cane which moves from producing points to sugar mills in the long established cane sugar producing State of Louisiana. For many years there has been a heavy movement of cane from Louisiana fields to mills. The Louisiana Public Service Commission has prescribed maximum scales of rates on this movement, one scale for application only when the entire product of the cane is reshipped via roads handling the cane to the mill and another for application when the entire product of the cane is not reshipped via roads handling the cane to the mill. The latter is exactly double the former. These are single line scales, the Louisiana Commission having required that on joint haul movements full combinations of the scales for the distances to and beyond the junction points be applied without the usual 10 percent deduction from the separate factors. The scales so prescribed are subject to carload minimum weight of 30,000 pounds.

Several years ago, the cane originating roads in Louisiana voluntarily established for distances of 20 miles and less a lower scale of rates but subject to carload minimum weight of 50,000 pounds. This scale was also applicable only in the event of reshipment of the entire product of the cane via the road hauling cane into the mill. In keeping with the Louisiana Commission's prescribed basis, the Louisiana roads also published a corresponding mileage scale, made 200 percent of that just mentioned, for applica-

[fol. 1062] tion when the entire product of the cane was not shipped via roads handling cane into the mill. These voluntarily reduced rates, subject to the 50,000-pound mini-

mum, were considered extremely low and the Louisiana roads were not willing to make them effective unless subject to expiration date. They were continued in effect for several years, but because they were so low the Louisiana roads determined last season that they could not afford to extend the expiration date and, therefore, the rates were allowed to expire with March 31, 1949.

My Exhibit No. 44(N) is a comparison of the present scale of rates, carload minimum weight 30,000 pounds, prescribed by the Louisiana Commission for distances of 100 miles and less with the formerly applicable scale of rates for distances of 20 miles and less, carload minimum weight 50,000 pounds, which expired last March. I call your attention to the fact that even the rates, subject to minimum weight of 30,000 pounds, prescribed by the Louisiana Commission were considered so low, and the railroads were so dissatisfied therewith, that they were published under protest and subject to the reservation quoted in Note "A" of the exhibit. The Louisiana rates prescribed by the Commission, and also those formerly maintained by the railroads as a temporary measure, included Ex Parte 162 and Ex Parte 166 increases as authorized by the Louisiana Commission.

[fol. 1063] Because the mileage scale applicable on sugar cane moving to Clewiston applies for both single line movements from Atlantic Coast Line Railroad origins and joint line movements from Florida East Coast Railway origins, while the Louisiana mileage scales shown on Exhibit No. 44(N) apply or applied for single line movements only, combination being applicable for joint line movements, I have shown on Exhibit No. 45(O) the actual rates from the Florida producing points to Clewiston in comparison with what the rates would be if predicated first, on the basis prescribed by the Louisiana Commission and second, on the basis formerly maintained temporarily by the Louisiana roads. The first page shows the present net transit rates from Florida points to Clewiston, while the second page shows the proposed net transit rates, i.e., the present rates as increased in line with proposals made by the railroads under Ex Parte 162 and Ex Parte 166.

For the reason that the Florida rates are not subject to the same carload minimum weights as those in Louisiana,

even this comparison of rates, in cents per ton, does not accurately reflect the differences between the two bases. Therefore, in addition to showing the rates themselves, the exhibit compares the minimum per-car revenues resulting from the present and proposed rates in Florida with what the minimum per-car revenues would be if the bases of rates and minimum weights applicable in Louisiana prior to March 31, 1949, were made effective in Florida. In other words, for the purpose of this comparison, we are giving the shippers the benefit of the alternation of the former temporary Louisiana basis, minimum weight 50,-
[fol. 1064] 000 pounds, with the present Louisiana Commission prescribed basis, minimum weight 30,000 pounds.

Since the carload minimum weight in Florida is 40,000 pounds during the first part of the season and 44,000 pounds during the latter part and since the Sugar Corporation seeks minimum weights of 36,000 pounds and 38,000 pounds in lieu thereof, the exhibit compares for the first half of the season the freight charges under the Florida basis and under the Louisiana basis on a car of 40,000 pounds and also on a car of 36,000 pounds. For the second half of the season it compares the Florida and Louisiana charges on a car of 44,000 pounds and on a car of 38,000 pounds. Since the Florida minima are 40,000 pounds and 44,000 pounds, respectively, the revenue shown on the exhibit for a 36,000-pound car is based on minimum weight of 40,000 pounds and the revenue for a 38,000-pound car is based on minimum weight of 44,000 pounds. The revenues resulting from the Louisiana basis are in some cases the same for a car of 36,000 pounds as for a car of 40,000 pounds, while in other cases, due to the alternation of the former rates subject to minimum of 50,000 pounds, with the rates subject to 30,000 pounds, there are slight differences.

It will be noted the charge for transporting a car of either 36,000, 38,000, 40,000 or 44,000 pounds from the first three stations on the exhibit to Clewiston would be $26.25 if the basis formerly in effect in Louisiana were made applicable in Florida. In comparison, on the present basis of rates in Florida, the shippers actually pay during the first half of the season only $7.00 on shipments from Miami Locks No. 1 and Miami Locks No. 2 and only $8.00 on ship-
[fol. 1065] ments from South Shore. During the second

half of the season they pay only $7.70 on shipments from the first two origins and $8.80 on shipments from the third origin as compared with $26.25 on the Louisiana basis. Even if the rates now proposed by the Florida Railroads should be used, the comparison, as show at the top of page two of the exhibit, would be Florida charges ranging from $10.00 to $12.76 per car as compared with $26.25 per car on the Louisiana basis. The exhibit speaks for itself and I think it is unnecessary to comment further upon the comparisons.

[fol. 1066] However, having shown what the comparisons would be on basis of the rates formerly in effect in Louisiana, but which have now expired by limitation, I think the Commission should know what the comparisons would be if Florida rates should be made on basis of the mileage scale applicable in Louisiana since expiration of the rates formerly maintained by the Louisiana roads on a voluntary and temporary basis. Such comparisons, set up in the same form, are contained in Exhibit No. 46 (P), the present rates and minimum per-car charges being shown on page one and the proposed Florida rates and minimum per-car charges on page two. Of course, the comparisons in this exhibit are even more favorable to the present and proposed Florida bases than those in Exhibit 45(O) predicated on the lower basis that was formerly applicable in Louisiana.

In order that the Commission may better appreciate and evaluate the significance of the foregoing comparisons, it would be well to explain at this point that the transportation characteristics of the Louisiana cane are not greatly different in most respects from those of Florida cane. In certain respects, the incidents of transportation of the Florida cane are somewhat more favorable, while in others the incidents of transportation of the Louisiana cane are more favorable, so it is probable that substantially a balance can be struck, thus rendering the comparisons extremely significant.

In the first place, the Louisiana cane probably does not move in quite as great volume, certainly to any one mill, [fol. 1067] as the Florida cane but the Louisiana movement nevertheless is quite substantial. For example, in the 1948-49 season the Southern Pacific alone transported more than 5,000 cars of cane to mill points on its line.

The Louisiana movement is entirely in railroad cars, while the Florida movement is in cars owned by the industry. However, inasmuch as the railroads pay the United States Sugar Corporation an agreed mileage allowance for the use of its cars there is, as a practical matter, no substantial difference between the Florida and the Louisiana situations in this respect.

The average length of haul in Louisiana is substantially same as in Florida. The average haul of the Southern Pacific (T&NO) is slightly over 20 miles, while the hauls of the Missouri Pacific range from 2 miles to 39 miles. The Florida hauls range from 2 miles to 29 miles.

The average loading in Louisiana is greater than in Florida. The 1948-1949 season's movement of the Southern Pacific, which is the most important of the Louisiana cane hauling roads, averaged 48,200 pounds per car. In the previous season it was 51,600 pounds.

In Louisiana, as in Florida, the loading of the wagons or trucks in the fields is performed in practically all instances by mechanical devises. Generally the device is a mechanical "grabber" which is simply a tractor-bourne field derrick operating something like a dragline. The cane is then hauled to A-frame loader derricks which transfer it from the wagons into the cars. Field trucks are loaded by hand only on the very small plantations and the proportion of the Louisiana cane movement originating on these farms is negligible.

Most of the sugar factories in Louisiana receiving cane by rail have their own power and switch the cars between [fol. 1068] the interchange track of the railroad on the one hand, and the points of unloading in the mill property, on the other hand. In such cases, the railroads perform no special switching service, but merely place the trains of cars loaded with cane on the interchange track from which they are taken by the mill engines. Likewise, the mill engines place the empty cars on the same or, in some cases, a different interchange track where the railroad engines are coupled to them for movement to loading stations. Among the mills so performing their own switching service are the Raceland Mill of Godchaux Sugars, Inc., at Godchaux, the Sterling Mill of Sterling Sugars, Inc., Franklin, La., the

Billeaud Mill of the Billeaud Sugar Factory at Billeaud, La., the Erath Mill of Erath Sugar Company, Limited, Erath, La., and the Cypremort Mill of Cypremort Sugar Company, Inc., at Burguieres, La. There are others operating in the same manner and these are merely examples.

Cane cars for the Sterling Sugar Refinery moving via Missouri Pacific Railroad are placed by that road on the interchange track at Sterling Junction and subsequent movement from that location is by privately-owned locomotives of the factory, the empties being returned in the same manner. At both the Alma Mills at Lakeland, La., and the Westover Mill at Westover or Anchorage, the Missouri Pacific engine places the loaded cars on a long track known as the cane track. One of these mills handles the cars with tractors from the interchange track to point of unloading, while the other handles them with its locomotive. Some of the mills served by the Southern Pacific and Texas and Pacific do their switching with steam locomotives and others with gasoline engines.

At a number of the Louisiana Mills the cars are weighed by the industry on scales belonging to the industry and, as in the case of the Clewiston movement, the weights so [fol. 1069] ascertained are observed in assessing freight charges. Among the mills performing their weighing services are the Valentine Mill of Valentine Sugars, Inc., at Jay, La. Incidentally, it also performs its own switching service, although I failed to name it a while ago. In addition, there are the Billeaud, Erath and Cypremort Mills and others.

[fol. 1070] One of the most important factors in the sugar producing industry is the sucrose content or sugar producing capacity of the cane. Some cane produces more sugar than other cane and since the volume or tonnage of cane handled is an important element contributing to the cost of mill operation, this feature is watched very closely by all of the mills and accurate records are maintained. Obviously, other things being equal, the production of a ton of sugar would cost more if it required twelve tons instead of only ten tons of cane to produce it. Freight and other handling charges on two tons of cane would be saved

and there would be two less tons of raw material to be handled through the mill rollers.

The Agricultural Department of the State of Louisiana and the Louisiana State University and Agricultural Experiment Station have naturally been very much interested in this situation and have conducted a great deal of research with respect to this and other phases of the sugar cane industry. Certain of their findings are set forth in Louisiana Bulletin No. 418, issued jointly during June, 1947, by the Louisiana State University and Agricultural Experiment Station, Louisiana Agricultural and Mechanical College. Exhibit No. 47 (R) shows, for the representative years 1942 and 1945, information taken from Table IX of this bulletin concerning the costs to Louisiana sugar mills of procuring the amount of cane necessary to produce 100 pounds of raw sugar. The table separates these costs as between cane of different values, i.e., different sugar producing capacities or sucrose content. According to page [fol. 1071] 20 of this bulletin, one of the most important factors causing differences in unit costs, returns and net profits from raw sugar mill operation is the number of pounds of sugar manufactured per ton of cane ground. One major factor causing variations in the yield of sugar per ton of cane ground is the percentage of sucrose in the cane. Differences in sucrose content of cane compensated, at least partially, by corresponding differences in the price paid for cane by the mill under the usual cane-purchase contract. Exhibit No. 47 (R) shows that in 1942 it cost $3.21 to procure enough Louisiana cane to produce 100 pounds of raw sugar when the cane was of such quality as to produce less than 150 pounds of sugar per ton of cane. As the sucrose content of the cane increased the cost of procuring enough cane to produce 100 pounds of raw sugar grew progressively less until the cost was only $2.60 for cane of such quality as to produce 180 or more pounds of sugar per ton of cane. Likewise, the study covering the year 1945 showed that the cost of procuring sufficient cane to produce 100 pounds of raw sugar in that year progressively diminished in direct proportion to the increase in sucrose content of the cane.

[fol. 1072] Also the United States Department of Agricul-

ture keeps close check on the sugar cane situation in Louisiana and from time to time issues bulletins called Sugar Mill Letters, somewhat similar to its bulletins in regard to other farm products. For example in a table attached to its Sugar Mill Letter No. 10, dated June 3, 1949, the U. S. Department of Agriculture shows, by seasons for the 1937-1938 season through the 1948-1949 season, the average number of pounds of 96 degree raw sugar produced per ton of Louisiana cane ground. At the same time, similar information for the Florida cane ground at the Clewiston mill is shown for each season in the annual reports of the United States Sugar Corporation. Taking these records as a basis, I have shown on Exhibit No. 48 (Q), one page, a comparison of the average number of pounds of 96 degree sugar produced per ton of cane ground in Florida, Column (D), with the average number of pounds of 96 degree sugar produced per ton of cane ground in Louisiana, Column (E). The Florida figure for the 1948-1949 season is not included because the 1949 Annual Report of the U. S. Sugar Corporation has not yet come out. In every one of the eleven seasons for which comparisons are shown the average ton of Florida cane has produced from 14.66 to 48.02 pounds more sugar than the average ton of Louisiana cane, and in only two of the eleven seasons has the advantage of the Florida cane been less than 22 pounds.

In the last column, I have shown for each season the percentage by which the sugar content of the Florida cane has exceeded that of Louisiana cane. The excess, Florida over Louisiana, has ranged from 8.55 percent in the 1942-43 season to 29.65 percent in the 1940-41 season. The extent to which the sugar producing capacity of Florida cane has exceeded that of Louisiana cane over the entire period of eleven seasons has averaged 18.31 percent.

[fol. 1073] I now offer as my Exhibit No. 49 (S), four pages, a comparison of present and proposed rates and minimum per-car charges on sugar cane from Florida shipping points to Clewiston with what the rates and charges would be if predicated on the basis of rates now applicable in Louisiana. It also compares the values of the respective services to the shippers. Pages one and two make the comparisons on basis of the present Florida rates, while

pages three and four show comparisons on basis of the rates which the railroads are seeking to make effective in Florida, namely, the present rates as increased under Ex Parte 162 and Ex Parte 166. Because the Florida carload minimum weight is 40,000 pounds from the beginning of the season through January 31st and 44,000 pounds from February 1st through the end of the season, pages one and three show minimum per-car charges on weight of 40,000 pounds in effect during the first half of the season and pages two and four show charges on minimum weight of 44,000 pounds in effect during the second half of the season.

Perhaps a word of explanation is necessary. Looking at the first page of the exhibit, it will be seen that the first column shows what the rates from the Florida origins to Clewiston would be if predicated on the basis of rates now in effect in Louisiana as shown in Exhibit No. 44 (N). The second column shows the present rates from these origins to Clewiston.

The third column shows what the carload minimum charges would be if the Louisiana basis of rates and minimum weights should be substituted for those now applicable in Florida. On a minimum car of 30,000 pounds the charges [fol. 1074] per car would be $25.80 on cane moving from Florida East Coast stations and $12.90 on cane from Atlantic Coast Line stations. The fourth column shows the present charges on a minimum car of 40,000 pounds from the Florida origins to Clewiston. In other words, looking at the first two lines we see that from Miami Locks No. 1 and Miami Locks No. 2, the Sugar Corporation now pays $7.00 for moving a car of 40,000 pounds to Clewiston, whereas if the present Louisiana rates and minimum weights were in effect the Sugar Corporation would be paying $25.80 for moving a car of only 30,000 pounds to Clewiston.

The fifth column shows the percentages that the present Florida charges shown in the fourth column are of the Louisiana charges shown in the third column. In other words, the charge for hauling 40,000 pounds of cane from these Coast Line and Florida East Coast stations to Clewiston ranges from 27½ percent to 62 percent of the charges that would be paid for hauling only 30,000 pounds to

Clewiston if the Louisiana basis were made applicable in Florida.

The purpose of the last two columns is to show percentagewise the value that the service on basis of the present Florida rates and minimum weights is of the service on basis of the Louisiana rates and minimum weights applied on a car of 36,769 pounds. As shown by page 3 of my Exhibit No. 38 (I) that was the average loading of those cars of cane moving from Atlantic Coast Line Railroad and Florida East Coast Railway stations to Clewiston during the first half of the 1948-1949 season that were loaded to less than the carload minimum weight of 40,000 pounds. The sixth column of figures in Exhibit 49 (S) shows that [fol. 1075] the 36,769 pounds, transportation of which is obtained for the charges shown in the fourth column is 122.8 percent of the weight of 30,000 pounds, transportation of which would be obtained by payment of the Louisiana basis of charges shown in the third column. In other words, taking Canal Point, the sixth origin shown on the exhibit, as illustrative, by paying only 42.6 percent of the charge that would be required on the Louisiana basis of rates, the Florida shippers obtain transportation of 122.8 percent as much tonnage as would be obtained on the Louisiana rate.

However, this mere comparison of tonnage does not tell the whole story. As just demonstrated by my Exhibit No. 48 (Q), the sucrose content of the Florida cane, consequently the value of the Florida cane from the standpoint of sugar producing capacity, has averaged over a long period of years 18.31 percent greater than the Louisiana cane. Actually, therefore, the transportation of each hundred pounds of Florida cane is worth as much as the transportation of 118.31 pounds of Louisiana cane. Therefore, when we consider not only that for $11.00 the Sugar Corporation obtains transportation of an average of 36,769 pounds (even when cars are loaded to less than the tariff minimum weight) as against only 30,000 pounds in Louisiana for a charge of $25.80, but that each 100 pounds of Florida cane is equivalent on the average to more than 118 pounds of Louisiana cane, we find that the value of the Florida service is actually 145.3 percent of the value of the Louisiana service. This means that, for charges ranging from only

[fol. 1076] 27 percent to 62 percent of the Louisiana charges, the Florida shippers obtain 145 percent of the value of transportation service that the Louisiana shippers obtain and adds to the significance of comparisons of Florida with Louisiana cane rates.

It is unnecessary to deal at length with the comparisons shown on the other three pages of the exhibit but I should mention that, arriving at the results in the same way, we find from page 2 that for the last half of the season, the Florida shippers obtain 158.5 percent as much value of transportation service as the Louisiana shippers although the charges they pay range from only 29.8 percent to 68.2 percent of the Louisiana charges. Bear in mind that this is based on the average weight of only those cars that were loaded to less than the minimum weight of 44,000 pounds in the second half of the 1948-49 season, as shown on page 3 of Exhibit No. 38 (I).

Pages 3 and 4 of Exhibit 49 (S) show that, even on basis of the proposed Florida rates, including Ex Parte 162 and Ex Parte 166 increases, the Florida charges during the first part of the season would range from only 38.8 percent to 89.9 percent of the Louisiana charges and that during the second part of the season they range from only 42.6 percent to 99 percent of the Louisiana charges for services that are worth 145.3 percent and 158.5 percent, respectively, of the Louisiana services.

[fol. 1077] As stated, the comparisons made in Exhibit No. 49 (S) are with what rates and charges would be if predicated on the present basis of rates in Louisiana. In order that the picture may be complete, I show on the statement of one page, identified as Exhibit No. 50 (T), a comparison of the present and proposed Florida rates with what the rates would be if predicated on the temporary rates that were formerly in effect in Louisiana, but which expired March 31, 1949. I have shown revenue at the Louisiana basis of rates on the average weight of 48,200 pounds, to which all cars moving over the Southern Pacific to Louisiana mills were loaded during the 1948-1949 season but, inasmuch as the rates were subject to minimum weight of 50,000 pounds, that weight has been used in computing the per car charges. In comparison the Florida charges are

at the average loading of 43,817 pounds obtained during the second part of the 1948-49 season when the minimum weight was 44,000 pounds. Per car revenues on the 43,817 pounds are computed at the minimum weight of 44,000 pounds. The exhibit shows that from Canal Point the Sugar Corporation now pays $12.10 for moving the average car of 43,817 pounds to Clewiston, but that if the basis of rates and minimum weights formerly in effect in Louisiana were observed in Florida it would pay $36.25 for moving an average car of 48,200 pounds. In other words, as shown by the first column under the last block of figures, the present Florida charge on a car of 43,817 pounds is only 33.4 percent of what the Louisiana charge would be on 48,200 pounds. As shown by the last column, even the proposed Florida charge for 43,817 pounds is only 47.9 percent of the former Louisiana charge for 48,200 pounds.

[fol. 1078] As illustrated by Exhibit No. 48 (Q), the average sugar producing value of Florida cane is 118.31 percent of Louisiana cane. Therefore, as shown just under the rate and revenue tables in Exhibit No. 50 (T), 43,817 pounds of Florida cane is equivalent in sugar producing value to 51,840 pounds of Louisiana cane. Actually, therefore, the sugar content of the average car of 48,200 pounds of Louisiana cane is 7.6 percent less than the sugar content of the average care of 43,817 pounds of Florida cane. Consequently, the percentages that the Florida charges, shown in last two columns, are of charges on the Louisiana basis, although reflecting transportation of 3,232 more pounds of cane, actually reflect transportation of about 7½ percent less sugar in the form of cane than do the Florida charges.

[fol. 1079] Very few commodities have value and other transportation characteristics sufficiently similar to the sugar cane moving to Clewiston for rate and revenue comparisons thereon to afford a fair index of the reasonableness of the rates on sugar cane. However, since a great deal of sugar is produced from sugar beets in several of our western states, I think it is appropriate that we see how the Florida sugar cane rates and revenues compare with the rates and revenues on the sugar beets.

On the first page of my Exhibit No. 51 (U), two pages, are shown the present and proposed scale of rates on sugar

cane from Florida points to Clewiston. This scale has single line application from Coast Line stations and joint line application from Florida East Coast stations. In comparison are shown the single-line scales of rates on sugar beets in the nine most important beet sugar producing states in the country. The present rates on sugar cane do not include any of the Ex Parte increases, while the proposed rates are the present rates, plus 15 percent under Ex Parte 162 and 25 percent under Ex Parte 166. The rates on sugar beets shown in the exhibit include such increases under Ex Parte 162 and Ex Parte 166 as have been permitted by the respective state commissions.

The nine states in which rates on sugar beets are shown have been arranged in the exhibit in the order of their importance from the standpoint of production of beet sugar. In the year 1942 there were nine factories in California producing 2,332,000 tons, in Colorado there were sixteen factories producing 2,178,000 tons, in Michigan there [fol. 1080] were ten factories producing 1,098,000 tons, in Idaho eight factories producing 1,076,000 tons, in Nebraska seven factories producing 916,000 tons, in Montana five factories producing 915,000 tons, in Ohio seven factories producing 595,000 tons, in Utah seven factories producing 572,000 tons and in Wyoming nine factories producing 447,000 tons. There is some movement of sugar beets in a few other western states, but comparatively the movement is light and does not warrant inclusion of those states in the exhibit.

Largely because of the ease with which they may be loaded sugar beets provide quite attractive tonnage for the motor trucks and the railroad rates applicable thereon in the western states shown in the exhibit are generally very much lower than they would be were it not for drastic reductions that have been made in an effort to meet motor truck competition. For example, the rates applicable in Michigan and on interstate traffic between Ohio points, Interstate Commerce Commission during 1924 in ICC Docket No. 14881 (91 ICC 677) on intrastate traffic in Ohio and Michigan and on interstate traffic between Ohio points, on the one hand, and Michigan points, on the other hand, but for distances of 45 miles and less are from 22 to 25 cents

and for distances from 45 miles to 75 miles are in some cases 31 cents and in others 32 cents per ton less than the rates so fixed by the Interstate Commerce Commission. The rates in several other states also have been held down by motor truck competition. In addition, because of efforts on the part of the railroads serving the beet sugar mills to assist [fol. 1081] those mills in meeting competition with cane sugar, some of the rates on sugar beets are lower than they would otherwise be. For example, the California scale was cut back during 1922 by dropping entirely the Ex Parte 174 increase of 25 percent made August 26, 1920, the purpose being an effort to assist the beet sugar operators who were in distress due to cane sugar competition. Incidentally, the California scale is not published in the tariffs as a mileage scale but is an unpublished scale in cents per 100 pounds observed in the establishment of such single line point-to-point commodity rates as have been established. Similar conditions during 1930 caused the California roads to drop the 25 percent increase that had been made effective June 25, 1918, for hauls in excess of 150 miles. Therefore, in comparing sugar cane rates with the rates on sugar beets, it may fairly be said that we are comparing them with rates that have been held to a subnormal basis by reason of motor truck competition and competitive conditions in the industry.

Also I think it should be made clear that a comparison of the rates on sugar cane and sugar beets is not entirely fair to the railroads handling cane for the reason that sugar beets load so much more heavily than cane. For example, the average loading of California sugar beets moving via Southern Pacific, which serves eight of the nine beet sugar mills in that state, approximates 75,000 pounds per car, the beets generally moving in blocks of 20 to 25 cars. The average loading of the 15,924 cars which the Northern Pacific Railway moved to the mills at Sidney, Billings, and Missoula, Mont., East Grand Forks, Minn., and Toppenish, [fol. 1082] Wash., in 1946, was 100,000 pounds. The average loading of the 6,922 cars handled by the Union Pacific Railroad intrastate in Utah during the 1946-47 season was 91,440 pounds. Sugar beets are generally moved in standard gondola cars, some of which are equipped with tempo-

rary racks to heighten the cars and increase their bulk loading capacity.

I think the rates themselves, or most of them shown on the first page of my Exhibit No. 51 (U), tend to illustrate quite forcibly the reasonableness of not only the present but the proposed rates on sugar cane from Florida points to Clewiston. However, from what I have just said it can be readily appreciated that a true comparison of the charges on sugar cane and sugar beets cannot be obtained from a simple comparison of the rates.

Therefore, the second page of the exhibit compares the present and proposed minimum per-car revenue on sugar cane from Florida points to Clewiston with the present minimum per-car earnings on sugar beets in the states named on the first page and shown in the same order. In Nebraska, Montana and Utah, the carload minimum weight governing the rates shown on Page one of the exhibit is "marked capacity of car." In such cases, I have very conservatively used weight of 90,000 pounds to state the minimum per-car earnings on page two. It is quite certain that the marked capacity of the average car would be at least that great since, as already stated, the average loading in Utah is 91,440 pounds and in Montana it is 100,000 pounds. In Wyoming the published minimum weight is 80,000 pounds and in California it is 60,000 pounds. In [fol. 1083] Colorado, Michigan and Ohio it is 40,000 pounds and in Idaho only 24,000 pounds. However, the published minimum weight of 24,000 pounds is of little significance, certainly for the short hauls, since the charges are specificially subject to minimum of $20.00 per car. In Colorado, where the published minimum weight is 40,000 pounds, the charges are subject to minimum of $24.00 per car and in Michigan and Ohio where the published minimum weight is 40,000 pounds, the charges are subject to minimum of $20.55 per car. The rates on sugar cane to Clewiston are not subject to any minimum per car charge and where the rate is 30 cents per ton and the published minimum weight is 40,000 pounds the resulting charge of $6.00 is all we get for hauling the car from origin to Clewiston. I think that with the foregoing explanation the comparisons on the lower half of this exhibit speak for themselves.

[fol. 1084] As is well known, there are two kinds of transit arrangements. One is the through rate plan of transit and the other is transit under a system of net transit rates.

Under the through rate plan of transit, the raw material is moved from origin into the point at which it is stored, milled, mixed, fabricated, cleaned or put through some other manufacturing process and ordinarily the local rate is applied on the inbound movement just as it would be applied on any other movement not accorded transit arrangement, but as to which the originally billed destination is the final destination. Upon reshipment of the finished product from the transit point, charges are readjusted to basis of the through rate on the finished product from the origin of the raw material through the transit point to the ultimate destination, plus a specified charge known as a transit charge. The purpose of the transit charge is to compensate the railroads for keeping the records and performing other services incident to the operation of the transit arrangement.

The other kind of transit arrangement is the net transit rate plan. Rates known as net transit rates, and generally a good deal lower than rates applicable on ordinary local movements where the inbound haul is not tied in with the outbound haul of the finished product, are established from origins of the raw material to the transit point. When the raw material moves into the transit point the local rate, not the net transit rate, is assessed but when the product of the raw material is shipped from the transit point the charge paid on the inbound movement of raw material at the local rate is readjusted and cut back to the lower net transit rate. In this kind of transit arrangement there is no transit charge such as is paid under the through rate plan of transit.

[fol. 1085] In some cases, the transit user prefers to pay the net transit rate, rather than the regular local rate, on the inbound raw material in the initial instance and then have the inbound charge readjusted upwardly to basis of the higher local rate in the event the product of the inbound raw material is not shipped by rail as required by the tariff. When this is desired by the transit operator, the privilege is usually granted by the railroad but, because of

credit requirements in the law, it is necessary in such cases, and is so required by the Interstate Commerce Commission's rules, that provision be made in the tariff containing the net transit rates that in order to pay on basis of such net transit, or proportional, rates in the initial instance a surety bond be filed by the transit operator with the railroad guaranteeing payment of the higher inbound local rate in the event the terms of the transit arrangement should not be complied with and the product of the inbound raw material should not be reshipped by the railroad that brought in the raw material.

On the statement of six pages now offered as my Exhibit No. 52 (V), I have shown details of a large number of representative transit arrangements authorizing storage, milling, fabrication, completion of loading, partial unloading, mixing, grinding, repacking, and other transit privileges under the through rate plan of transit. This includes various transit arrangements on raw materials originating in Florida and accorded transit arrangements at transit points both in Florida and in states north thereof. The statement shows in the third to the last column the transit charges in cents per 100 pounds and in the next to last column what the resulting transit charges are on minimum carloads of the commodities involved. These transit charges, it will be noted, range from $10.00 to $57.50 per car, being as low as $10.00 in only one of the many instances shown in the exhibit.

[fol. 1086] By reference to my Exhibit No. 40-(K), it will be recalled that under the present net transit rates on sugar cane to Clewiston the shippers pay the railroads on a car of 40,000 pounds amounts ranging from only $6.00 for the shorter single line hauls to only $11.00 for joint line hauls of as much as 29 miles. Under the proposed rates the charges would range from only $8.80 to $15.80 for transporting a carload of 40,000 pounds anywhere from 2 miles to 29 miles. During the second half of the season when the minimum weight is 44,000 pounds, the present charges range from $6.60 to $12.10 per car and the proposed charges from $9.68 to $17.38 per car. It would seem when these meager returns for the line haul transportation service in connection with loads of 40,000 to 44,000 pounds of cane

are compared with transit charges under the through rate plan of transit, ranging around $22.50, $27.00, $34.00, $41.40, $46.00 and $57.50 per car, that both our present and proposed charges under the net transit rates on cane to Clewiston are far and away less than reasonable maximum charges.

[fol. 1087] PROTESTANT'S EXHIBIT #53

Docket No. 30140

Direct examination—Fred Pettijohn:

Q. Give your name, occupation and address.

A. Fred Pettijohn, Director Commerce Department, Florida Railroad and Public Utilities Commission, Tallahassee, Florida.

Q. How long have you been with the Florida Railroad and Public Utilities Commission?

A. Since June 10, 1925.

Q. What was your experience prior to that time?

A. From about 1920 to the time that I entered the service of the Florida Commission I was engaged in private practice in Chicago specializing in cases before the Federal Commission and State Commissions and also determined for the Secretary of War the cost of steel rails commandeered by him for the railroads during World War I.

For about two years prior to 1920 I was Chief Cost Accountant for the United States Railroad Administration and for about eleven years prior to that I was connected with the Mutual Audit Company of Louisville, Kentucky, which company specialized in preparing, introducing and defending analytical and statistical cost studies before the Federal and State regulatory Commissions.

For about seven years prior to that time I was employed by railroads in the Disbursements, General Auditing and [fol. 1088] Statistical Departments in the general offices and also as Accountant in the divisional offices.

Q. Are you familiar with the issues involved in this proceeding?

A. I am. This proceeding arose out of the Florida Rail-

road and Public Utilities Commission's failure and refusal to make the same percentage increase on intrastate traffic as was prescribed by the Interstate Commerce Commission in Dockets Nos. Ex Parte 162 and 166.

Q. Have you prepared any exhibits for introduction in this proceeding?

A. I have.

Q. To what facts and conditions did you give consideration before determining what evidence you would prepare for introduction in this proceeding?

A. In the Ex Parte 162 and 166 cases the evidence introduced before the Interstate Commerce Commission pertained to the four major districts and to the United States as a unit. No evidence was introduced pertaining to the operations within any State in the Southern Region. The percentage increases authorized for the Southern Region must, therefore, have been predicated on the assumption that the agricultural and industrial products and traffic conditions are similar throughout the Southern Region. [fol. 1089] Unless this assumption is a fact there is and can be no justification in my opinion for treating Florida the same as the balance of the South. In fact, the Interstate Commerce Commission recognized a difference in agricultural, industrial and traffic conditions when it prescribed a 25% increase from, to and within Zone I of Western Trunk Line Territory but assigned only a 20% increase within Western territory other than Zone I of Western Trunk Line Territory. (270 I. C. C. 93-98).

We in Florida know that industrial and agricultural production and traffic conditions are not similar to those of the Southern Region and this is especially true when consideration is given to the fact that certain rates to, from and within the State of Florida are superimposed with the so-called Florida arbitrary, this arbitrary having been first imposed in the Southern Class Rate Investigation (100 I. C. C. 513) decided July 7, 1925. The Interstate Commerce Commission stated that less traffic density per mile of road and less tonnage per train mile obtaining in Peninsular Florida than in Southern territory warranted a higher rate on traffic from and to the State of Florida.

Subsequently, in Growers and Shippers League of

Florida vs. Aberdeen and Rockfish Railroad Company, et al., Docket 25071, 200 I. C. C. 273, evidence was introduced showing that based upon information introduced by the carriers in Docket 17936, Refrigeration Charges on Fruits, Vegetables, Berries and Melons from the South, [fol. 1090] during the years 1927 and 1928 the weighted average traffic density and weighted average train loading from points of origin in Florida to Eastern territory destinations were greater than those obtaining on the Atlantic Coast Line Railroad as a whole or on that railroad exclusive of the operations in the State of Florida. In addition, since these arbitraries were imposed, that portion of the Key West extension of the Florida East Coast Railway from the mainland to Key West has been abandoned, as has been that portion of the Florida East Coast Railway from Maytown to a point about fourteen miles below Okeechobee, and the Florida East Coast has connected up that portion of the road originally operated from Lake Harbor North from a point about fourteen miles Southeast of Okeechobee to Fort Pierce so as to enable it to operate more economically and efficiently.

These facts, together with the phenomenal increase in the production of citrus fruits and vegetables in Florida, the inauguration and phenomenal growth of the use of auto transportation and the competition which has been developed by reason of auto transportation, have changed the entire transportation picture and problem within the State of Florida. When consideration is also given to the fact that the tons of coal originated in the Southern District represent 32% of the total tonnage originated and the tons handled represent 27.5% of the total tons handled, whereas coal tonnage is negligible in Florida, it seems obvious that the circumstances and conditions pertaining [fol. 1091] to agricultural and industrial production and transportation and traffic conditions in Florida are entirely dissimilar to those obtaining in the Southern Region. For this reason we determined to show as far as we are able some of these differences.

Q. What is your first exhibit?

A. My first Exhibit, No. 54, is a statement showing the tons of revenue freight originated within the Southern

Region and on the system and within the State of Florida by the Atlantic Coast Line Railroad Company, Florida East Coast Railway Company and Seaboard Air Line Railroad Company for the period 1928 to 1948 inclusive. The sources from which this information was secured are reflected on the exhibit.

Q. Why did you go back to 1928 to start your exhibit?

A. In order to currently estimate what proportion of the freight and passenger revenues are accounted for in each quarter of the year I decided that due to changes in rates, fares and charges the weighted average revenues for each quarter would have to be for a period of not less than twenty years in order to produce reliable percentages, and having made my estimates of the yearly revenues to be produced in each quarter on a twenty year average I decided to show all other data for the same period.

[fol. 1092] Q. Why did you confine your comparisons to the Atlantic Coast Line Railroad Company, the Florida East Coast Railway Company and the Seaboard Air Line Railroad Company and not include all carriers operating to, from and within the State of Florida?

A. Back in 1931 or 1932 I made a comparison of the revenues earned within the State of Florida and ascertained that of the total revenues earned in the State about 85% was earned by these three railroads. I then made an analysis of the total revenues earned by all railroads operating to, from and within the State of Florida and found that these three Florida roads earned 89.621% and 90.563% in 1946 and 1947 respectively of the total operating revenues earned by all railroads in Florida. I also found that these three Florida roads earned 90.096% in 1946 and 90.189% in 1947 of the total intrastate revenues earned within the State of Florida.

These three railroads, handling that proportion of the revenues within the State of Florida, obviously represent a reliable cross section of Florida operations.

Q. What specific comment do you desire to make with respect to this exhibit?

A. This exhibit shows that for the Southern Region the tons originated in 1947 were but 23.5784% greater than

in 1928; that for the three roads the increase was 72.2239%; whereas, the increase in Florida was 106.8747%. Comparing 1947 to 1939 shows that for the Southern Region the [fol. 1093] increase was 86.26%, for the three Florida lines 125.91%, and for the State of Florida 141.62%. This shows that the Southern Region has not kept pace with either the three Florida lines or the operations within the State of Florida.

Q. What is the next exhibit you have prepared to offer in evidence in this proceeding?

A. My next Exhibit, No. 55, is a comparison of the tons of freight originated, terminated and handled for the three Florida roads and in Florida for the years 1928 to 1948, inclusive. This exhibit shows that the tons of freight originated, terminated and handled within the State of Florida increased in a greater percentage than did those for the system as a whole.

Q. What is the next exhibit which you have to offer?

A. My next Exhibit, No. 56, compares the revenue ton miles and the freight revenue for the Southern Region with the three Florida lines and with the operations of the three Florida lines in Florida. The top half of this exhibit shows that while the revenue ton miles of the Southern Region increased but 51.2526% the increase for the three Florida lines was 141.1013%, and for the three Florida lines in Florida 136.9706%, the increase in Florida being slightly less than that for the system. A comparison of the percentage relationship under Column 4 and Column 6 shows that the increase in Florida tonnage has been at all times less [fol. 1094] than the increase on the system. This is due primarily to Florida traffic having greater water competition, both coastwise and inland, and greater truck competition than for the system generally.

The lower half of the exhibit shows that the freight revenue in the Southern Region increased but 76.1485%, whereas, for the three Florida lines it increased 124.1473% and the Florida operations increased 132.6647%. Attention is directed to the fact that while the revenue ton miles increased in a greater percentage for the three systems than they did in the State of Florida, the reverse is true with respect to freight revenue, and the difference would be still

greater had the Atlantic Coast Line Railroad assigned the revenue inuring from the Florida arbitrary direct to Florida operations instead of prorating it on a mileage basis.

Q. What is your next exhibit?

A. My next Exhibit, No. 57, is a comparison of the revenue ton miles, freight revenue and revenue per ton mile for the three Florida railroads as a whole and for their operations within the State of Florida and also a comparison of the revenue per ton mile obtained in Florida with that obtained in the Southern Region.

Q. What comments, if any, have you to make with respect to this exhibit?

[fol. 1095] A. A comparison of the revenue per ton mile earnings under Columns 7 and 8 shows that with the exception of the years 1928 and 1930 the revenue per ton mile in Florida was greater than the revenue for the system as a whole. Again, had the Atlantic Coast Line Railroad assigned its freight revenue derived from the Florida arbitrary direct to the State of Florida the difference in revenue ton mile earnings would have been greater than reflected under Columns 7 and 8.

Likewise, a comparison of the ton mile earnings under Columns 8 and 10 and the percentage under Column 11 shows that the ton mile earnings in Florida have ranged from 16.27% to 64.92% greater than the ton mile earnings in the Southern Region.

Q. What is the next exhibit which you have to offer?

A. My next exhibit, No. 58, is a comparison of the revenue passenger miles and passenger revenue of the Southern Region with the system and Florida operations of the three Florida lines and reflects the percentage relationship of each year to 1928.

Q. What comments, if any, have you to make with respect to this exhibit?

A. A comparison of the relationships by years to 1928 under Columns 2, 4 and 6 shows that the revenue passenger miles increased in the Southern Region slightly over 45%, compared to an increase of 124.5% in Florida and 158.5% for the three roads as a whole; that with respect to pas-

[fol. 1096] senger revenue the Southern Region increased but 6%, whereas, Florida operations increased 50.9%

and the three roads as a whole increased 70.5%, again showing that there is no real relationship between the Southern Region, the three Florida lines and the operations of the three Florida lines in Florida.

Q. What is the next exhibit you have to offer?

A. My next Exhibit, No. 59, reflects a comparison between the system and the Florida operations of the three roads of the passenger miles, passenger revenue and revenue per passenger mile, and also compares the revenue per passenger mile in Florida with that for the Southern Region.

Q. What comments, if any, have you to make with respect to this exhibit?

A. This exhibit shows in Column 3, comparing 1948 to 1928, that the percentage of revenue passenger miles in Florida to the system has declined from 38.14% to 33.19% and that the passenger revenue, Column 6, has declined from 38.56% to 34.12%, or that the passenger revenue has not declined as much as have the revenue passenger miles. A comparison of the revenue per passenger mile, Columns 8 and 10, shows that for 1947 the revenue per passenger mile in Florida was 8.75% greater than for the Southern Region. A comparison of Columns 7 and 8 shows that with the exception of the year 1941 the revenue per passenger mile was greater in Florida than for the [fol. 1097] system as a whole.

Q. To what do you attribute the percentage decline in revenue passenger miles and passenger revenue Florida compared to the system?

A. In the first place the railroads, Florida being a terminal State, fix their schedules for the benefit of the through passengers and not for the benefit of the local passengers. In other words, the passenger train schedules are not fixed so that they can be utilized in a manner desired by the traveling public. In the second place, those local schedules are so slow and the equipment so antiquated that they are not attractive to the traveling public. In the third place, the carriers have intense competition with the buses between all of the major points in Florida. In the fourth place, the citizens of Florida utilize their own private cars extensively, and, in the fifth place, where

speed is desired air transportation is utilized. In fact, the branch line passenger traffic and local passenger traffic within the State of Florida appears to be doomed under present conditions and unless the carriers inaugurate a faster service with more desirable schedules they will, in my opinion; continue to lose the intrastate passenger traffic in Florida.

Q. What is your next exhibit?

A. My next Exhibit, No. 60, is a comparison of the train miles, locomotive miles, car miles and revenue ton miles [fol. 1098] in the Southern Region with similar data for the system and for the State of Florida for the same three Florida roads.

Q. What comments, if any, have you to make with respect to this exhibit?

A. This exhibit shows that the revenue tons per train mile, per locomotive mile and per car mile were less for the three roads and within the State of Florida than for the Southern Region, but it also shows that the operations in Florida were more favorable than for the system of these three roads. The bottom half of the exhibit shows information with respect to passenger service, and the operations of the three roads and within the State of Florida are more favorable than in the Southern Region.

Q. What is the next exhibit which you have prepared to offer?

A. My next Exhibit, No. 61, shows for the three Florida roads the system and Florida train miles, locomotive miles and car miles operated in both freight and passenger service with the percentages that the passenger service bears to the total of both services.

Q. What comments, if any, have you to make with respect to this exhibit?

A. This exhibit shows that in each instance, with the exception of the train miles in 1938 and the locomotive miles in 1946, the passenger percentage of the total freight [fol. 1099] and passenger miles is greater in Florida than for the system as a whole.

Q. What does this indicate to your mind?

A. It indicates to my mind that the Florida roads are operating more passenger train miles, locomotive miles

and car miles within the State of Florida than are warranted, and this is especially true in view of the fact that the passenger business is being operated at a loss.

Q. What is your next exhibit?

A. My next Exhibit, No. 62, shows the freight revenue and the passenger revenue for the system, for the State of Florida and intrastate within Florida.

Q. What comments have you to make with respect to this exhibit?

A. It shows that whereas the system freight revenue has increased 100%, the increase within the State of Florida has been 106.98%, but the intrastate revenue has only increased 15.90%.

Q. What conclusion, if any, do you draw from this small intrastate increase?

A. The small increase in intrastate traffic and revenue has in my opinion been due entirely to the diversion of traffic from the rail carriers to motor common carriers, contract carriers and private carriers. The State Highway Department maintains nine and one half thousand miles of paved highway within the State over which traf-[fol. 1100] fic of practically all kinds moves by truck; in fact, trucks are now handling intrastate citrus fruits, vegetables, petroleum products, lumber, fertilizer, logs and many other commodities in volume that formerly moved by rail. Truck transportation, in fact, is not only more expeditious, but in most cases cheaper and especially so when consideration is given to the fact that a truck haul is necessary from the point of origin to the rail head and from the destination terminal to its final destination. Obviously, any increase in the presently effective intrastate rates will only result in further diversions from the rail carriers.

Q. What have you to say with respect to the lower half of this exhibit which deals with passenger traffic?

A. The lower half of the exhibit shows that while the system revenue of the three roads increased 78% and the revenues within the State of Florida increased 58%, the intrastate passenger revenue declined 32.2%.

Q. What conclusion do you draw from this showing?

A. This showing indicates to me very clearly that the

reduction in passenger revenue has been due to increased rates, fares and charges and to diversions of passengers to common carrier buses, automobiles, airplanes and to private cars. It further indicates to me that the intrastate travelers prefer other modes of transportation to that of the rail carriers and under present conditions it would appear that the carriers' program of building better road [fol. 1101] beds, installing heavier steel, operating faster and more luxurious trains is not warranted by the volume of intrastate passengers which they can hope to attract to utilize rail service because, despite the improvements in rail transportation since 1928 there has been a marked decline in the revenues from intrastate service. In my opinion the carriers should concentrate on safety, dependability and comfort rather than upon the luxuriousness of the cars and the speed with which they are operated because under no conditions where speed is a factor can the rail lines hope to compete with airplanes. In fact, they cannot hope in Florida to compete with private cars between almost all important centers.

Q. What is your next exhibit?

A. My next Exhibit, No. 63, is a statement comparing the combined net railway operating income of the Atlantic Coast Line, Seaboard Air Line and Florida East Coast Railway, system and State of Florida, with the Southern Region, for the years indicated and separating this net railway operating income between freight service, passenger service and unassigned services. I was not able to obtain this information for the Southern Region for the year 1948.

This exhibit shows that for the years 1944 and 1945 the Southern Region, the three Florida lines and the operations in Florida all showed a net railway operating income from passenger service; that subsequent to that period only the three Florida lines system operations [fol. 1102] showed a net railway operating income; that for 1947 and 1948 the system and Florida passenger deficits were both in excess of 50% of the credit from freight operations. A comparison of the net railway operating income 1947 to 1944 shows that while the Southern Region freight net railway operating income increased 39.40%, the

operations of the three railroads increased 32.41%; whereas, the operations within the State of Florida increased 45%.

This exhibit tends to show that no increases are necessary for the three railroads operating within the State of Florida either for the system as a whole or for Florida operations if passenger business is placed on a paying basis; and that the loss from passenger revenue is the real reason the carriers are seeking additional increases in freight revenue.

Q. What is your next exhibit?

A. My next Exhibit, No. 64, shows for the years 1936 to 1947 inclusive, and for the three roads and for the Southern Region the net railway operating income separated between freight, passenger and unassigned services.

Q. Why did you start with the year 1936 in this statement?

A. Because that is as far back as our annual reports show a separation of net railway operating income between freight service and passenger service.

This exhibit shows that the freight net railway operating income for the calendar year 1948 was the second [fol. 1103] highest earned during the entire period and that with the exception of the War years 1942, 1943 and 1944 it was greater than the combined freight and passenger income for any of the other years. This statement further shows that if it were not for the passenger losses the railroads would not be in need of any additional revenue whatever.

Q. What is your next exhibit?

A. My next Exhibit, No. 65, is a statement comparing the actual freight revenue, passenger revenue, total revenue, operating expenses, net railway operating revenue and net railway operating income with the amounts which would be produced by expanding the revenues for the three months ended March 31st, six months ended June 30th and nine months ended September 30th, 1948, on the ratios which each of those quarters bore to the year based upon the weighted average for the twenty years ended 1947.

Q. What do you mean by the term "expanded to yearly basis combined"?

A. That means that I have simply taken the three railroads and treated them as a unit and expanded their operations on the theory that they were a combined railroad.

Q. What do you mean "expanded on a yearly basis individual"?

A. That means that I have expanded the operations of each railroad separately and combined the separate re-
[fol. 1104] sults.

Q. What do the results of your expansions show?

A. They show that with respect to the freight revenue my estimate on the three months basis was about $3,000,000.00 short; on a six months basis was practically in accord with the actual; and on a nine months basis was a little over $2,000,000.00 in excess of the actual.

With respect to the passenger revenue the estimate based upon the first three months ratio was about $2,500,000.00 in excess of the year's actual figures; whereas, for the six months and nine months periods the estimates were less than $200,000.00 difference. With respect to the total revenues the estimates for the first three months and first six months were very close to the actual revenues for the year, but the estimate on the nine months basis was about $2,700,000.00 in excess of the actual.

With respect to operating expenses my estimates in each case exceeded the actual expenditures by from $2,500,000.00 to $4,500,000.00.

My estimates for net railway operating revenues were from $1,900,000.00 to $4,300,000.00 less than actual net railway operating revenues, while on the other hand my net railway operating income was from $2,100,000.00 to $3,700,000.00 in excess of the actual. In this connection I might say that on the first three months basis I over-estimated the Atlantic Coast Line's net railway operating income $4,507,616; that I over-estimated the Florida East
[fol. 1105] Coast Company's net railway operating income $715,032; but that I under-estimated the Seaboard Air Line's $1,492,097. I also over-estimated the Atlantic Coast Line and the Florida East Coast for the six months

ended June 30, 1948, but again under-estimated the Seaboard by about $300,000.00.

Q. What is the next exhibit you have prepared for introduction in this proceeding?

A. My next Exhibit, No. 66, is one showing the investment, net railway operating income and rate of return of the Florida East Coast Railway Company for the calendar year 1947.

Q. From what source did you secure the investment in railway property used in transportation service?

A. That was secured from the annual report of the Florida East Coast Railway Company for the calendar year 1947. It appears on Page 212 under Schedule 211N.

Q. From what source did you secure the depreciation and amortization reserve?

A. That was taken from the annual report of the company for the calendar year 1947.

Q. The investment in transportation property less recorded depreciation and amortization is arrived at by deducting the depreciation and amortization from the investment, is it not?

[fol. 1106] A. It is.

Q. How did you get the apportionment between freight service and passenger service?

A. I took the total maintenance of way and structure expenses and the total maintenance of equipment expenses exclusive of depreciation and amortization for the calendar year 1947 and found that of these expenses 57.1524% was freight and the balance passenger.

Q. Why did you use only maintenance expenses in prorating the investment in property?

A. Because in my opinion the maintenance expenses applicable to freight and passenger service more clearly reflect the investment of the property applicable to each of the services than do total expenses or any other single factor

Q. Please explain your next item—working capital.

A. The working capital represents 9.606% of the operating expenses for the calendar year 1947.

Q. From what source did you secure this 9.606%?

A. Carriers' Exhibit No. 1, Page No. 2, Column 9, in Ex Parte 166 shows the total expenses for 1946 to have been

$6,357,415,175. In 269 ICC 33-47 the working capital including material and supplies is stated to be $610,712,400.00, which amount is 9.606% of the total operating expenses. [fol. 1107] I therefore used this same percentage in making an allowance for working capital for the Florida East Coast Railway Company and applied this percentage to the total operating expenses, to the freight expenses and to the passenger expenses respectively.

Q. Your rate base consists, does it not, of the investment in transportation property less recorded depreciation and amortization plus working capital?

A. It does.

Q. Where did you secure the net railway operating income?

A. That is taken from the annual report of the railway company.

Q. The rate of return is a computed figure, is it not?

A. It is.

Q. It shows that on freight business in 1947 the Florida East Coast had a return of a little over 8%, does it not?

A. It does.

Q. Explain your next figure, net railway operating income revised to reflect $1,400,000.00 excess profit tax refund applicable to prior period.

A. This $1,400,000.00 excess profit refund is simply deducted from the recorded net railway operating income [fol. 1108] because it is applicable to periods prior to 1947.

Q. Why did you prepare an exhibit showing the rate of return of the Florida East Coast Railway only?

A. Primarily because the Atlantic Coast Line and Seaboard Air Line do not make investment returns and depreciation allowances applicable to Florida operations. Any attempt to apportion the investment to Florida operations would necessitate rather lengthy investigation and a determination of proper factors, for which we have neither the force nor the time available. In addition, it is well known by this Commission and others that the operations of the Florida East Coast Railway are less favorable in Florida than are those of the Atlantic Coast Line or the Seaboard Air Line.

Q. What is the next exhibit which you have prepared to offer?

A. My next Exhibit, No. 67, is identical with Exhibit No. 66, except that it is for the calendar year 1948.

Q. Was it prepared in the same manner as the previous exhibit?

A. It was.

Q. And what does it show with respect to the freight rate of return?

A. It shows that the freight service produced a return of 12.35%.

Q. Do you think that the Florida Railroad and Public Utilities Commission would be entitled to authorize a return on intrastate operations of over 12%?

[fol. 1109] A. No, sir, I do not.

Q. Has the Florida Legislature to your knowledge ever passed an Act similar to the National Transportation Policy?

A. It has not to my knowledge.

Q. Do you know what the law is in Florida with respect to intrastate rates?

A. I do. The Supreme Court of Florida in 62 Florida 315 held that "where the same property, labor and management are used at the same time by a common carrier in interstate and intrastate commerce the value of the property and labor and management used should be properly apportioned in determining the reasonableness of the compensation for service rendered by the carrier in the intrastate business taken separately and as an entirety, or in connection with the interstate business currently done."

Q. Do you know of any Florida law which would justify the Florida Railroad and Public Utilties Commission placing upon the shippers of freight excessive rates in order to compensate for the loss in passenger revenue?

A. I do not. On the contrary, the Supreme Court of Florida held (Vol. 63, Page 288) that the remedy of the carriers for insufficient compensation for the rendition of passenger service is an application for an allowance of more remunerative rates.

Q. Did the evidence introduced by the carriers in the proceeding before the Florida Railroad and Public Utili-

[fol. 1110] ties Commission in Docket 1574, which decision is now under attack, introduce any evidence whatever showing what the intrastate investment, operating revenues, operating expenses, taxes, joint facility rents and equipment rentals were?

A. They did not.

Q. Would the evidence filed by the carriers in Docket 1574 permit the Florida Railroad and Public Utilities Commission to perform its duties under the conditions laid down by the Florida Supreme Court?

A. It would not.

Q. What is the next exhibit you have to offer?

A. My next Exhibit, No. 68, is one comparing the net railway operating income for the three months ended March 31, 1947, and March 31, 1948, with the percentage increases or decreases by districts or regions with similar information prepared for the Atlantic Coast Line Railroad Company, Florida East Coast Railway Company and Seaboard Air Line Railroad Company for the system and for their operations within the State of Florida.

Q. Is this exhibit identical with Exhibit No. 59 which you introduced in Docket 1574 before the Florida Commission?

A. It is.

Q. What does this exhibit show?

[fol. 1111] A. It shows that except for the Southern Region which showed an increase of 8.4%, the 1948 net railway operating income was from 3.5% to 76.8% less than in the preceding year and that for the United States as a whole it was 19.1%; whereas, the three railroads operating to, from and within Florida show an increase of 25.9% for the system and 26.6% for the Florida operation.

Q. What is your next exhibit?

A. My next Exhibit, No. 69, is similar to Exhibit No. 68, except that it is for the six months ended June 30, 1947 and 1948.

Q. What does this exhibit show?

A. It shows that all of the regions or districts except the Pocahontas Region and the Northwestern Region of the Western District had a percentage increase in net railway operating income for the first six months ended June 30,

1948; that the average increase for the United States was 9.94%; for the Southern Region was 22.67%; for the three Florida roads as a system was 51% and that the Florida operations were 59.9%, a higher increase than obtained for any district or region.

Q. What is your next exhibit?

A. My next Exhibit, No. 70, is similar to Exhibit No. 68, except that it covers the nine months ended September 30, 1947 and 1948.

[fol. 1112] Q. What does this exhibit show?

A. This exhibit shows that the net railway operating income for the nine months ended September 30, 1948, was from 8.7% in the Pocahontas Region to 86.5% higher in the New England Region than for the similar period of 1947. It shows that the Southern Region increase was 44% compared to an increase of 103.2% for the three Florida roads as a system and compared to 167.4% for the operations in Florida.

Q. What is your next exhibit?

A. My next Exhibit, No. 71, shows the same information as the previous exhibit except that it is for the twelve months ended December 31, 1947 and 1948.

Q. What does this exhibit show?

A. It shows that each of the regions and districts and the United States show a percentage increase in net railway operating income in 1948 over 1947 from 7.3% in the Pocahontas Region to 89.2% in the New England Region; that the Southern Region increase was 33.9%, whereas, the increase for the three Florida roads was 50.7% and for the three Florida roads Florida operations 60.4%.

Q. Do these last four exhibits introduced by you further confirm your opinion that the agricultural, industrial and traffic conditions in the Southern Region are not typical of those in the State of Florida?

A. They most certainly do.

[fol. 1113]

PROTESTANT'S EXHIBIT No. 54

I.C.C. Docket No. 30140

Witness: Pettijohn

Statement Showing Tons of Revenue Freight Originated Within Southern Region; and on System; and Within State of Florida, by the Atlantic Coast Line Railroad, Florida East Coast Railway, and and Seaboard Airline Railroad Company.

	Southern Region (1)	Percent Relationship to 1928 (2)	A.C.L., F.E.C., S.A.L. System (3)	Percent Relationship to 1928 (4)	A.C.L., F.E.C., S.A.L. Florida (5)	Percent Relationship to 1928 (6)
1928	187,305,858	100.0000	26,585,160	100.0000	13,150,724	100.0000
1929	179,729,462	95.9556	24,880,664	93.5885	12,905,042	98.1318
1930	157,319,360	83.9911	23,289,927	87.6056	12,560,232	95.5098
1931	124,176,361	66.2964	18,294,150	68.8134	9,491,671	72.1760
1932	88,943,080	47.4857	11,942,651	44.9222	6,959,816	52.9234
1933	92,221,363	49.2360	12,877,502	48.4387	7,618,670	57.9335
1934	99,246,665	52.9867	14,595,039	54.8992	8,699,296	66.1507
1935	104,141,724	55.6001	15,063,117	56.6599	8,901,288	67.6867
1936	126,275,441	67.4171	17,509,749	65.8629	9,790,042	74.4449
1937	134,218,957	71.6580	20,350,519	76.5484	10,859,731	82.5790
1938	113,368,927	60.5264	18,782,838	70.6516	10,464,585	79.5742
1939	124,272,480	66.3477	20,267,603	76.2365	11,259,742	85.6207
1940	140,073,146	74.7835	24,228,479	91.1354	13,355,749	101.5590
1941	175,478,359	93.6860	30,743,502	115.6416	16,038,141	121.9563
1942	217,033,555	115.8718	39,531,366	148.6971	20,624,125	156.8288
1943	218,830,979	116.8314	43,730,555	164.4924	26,445,454	201.0950
1944	214,244,655	114.3829	37,203,700	139.9416	21,517,671	163.6234
1945	210,196,949	112.2218	36,535,720	137.4290	20,635,386	156.9152
1946	211,310,392	112.8163	44,453,321	167.2110	24,838,155	188.8729
1947	231,468,396	123.5784	45,785,988	172.2239	27,205,524	206.8747
1948	na	na	47,492,654	178.6435	29,281,298	222.6592

na—Not available.

Source: Column 1 from Ex Parte 168, Exhibit 3, Page 21, Column 4. Columns 3 and 5 from annual reports to Florida Railroad and Public Utilities Commission.

[fol. 1115] I.C.C. Docket No. 30140

PROTESTANT'S EXHIBIT No. 56—Witness: Pettijohn

Statement Showing the Revenue Ton Miles and Freight Revenue of:
(1) The Southern Region;
(2) The Combined Operations of the Atlantic Coast Line Railroad Company, Florida East Coast Railway Company, and the Seaboard Air Line Railroad Company;
(3) The Combined Operations Within the State of Florida of the Atlantic Coast Line Railroad Company, Florida East Coast Railway Company, and the Seaboard Air Line Railroad Company

	Southern Region (1)	Percent Relationship to 1928 (2)	A.C.L., F.E.C., and S.A.L. System (Thousands) (3)	Percent Relationship to 1928 (4)	A.C.L., F.E.C. and S.A.L. Florida (Thousands) (5)	Percent Relationship to 1928 (6)
			Revenue Ton Miles			
1928	$57,784,149,746	100.0000	$6,940,895	100.0000	$2,194,600	100.0000
1929	57,089,152,045	98.7973	6,935,742	99.9258	2,128,251	96.9767
1930	48,720,761,387	84.3151	6,205,842	89.4098	1,987,952	90.5838
1931	39,031,788,504	67.5476	5,325,589	76.7277	1,570,996	71.5846
1932	29,165,157,902	50.4726	3,678,932	53.0037	1,135,773	51.7531
1933	30,942,035,404	53.5476	3,919,344	56.4674	1,205,608	54.9352
1934	32,900,841,227	56.9375	4,183,691	60.2760	1,367,993	62.3345
1935	35,204,471,052	60.9241	4,213,464	60.7049	1,321,971	60.2374
1936	42,449,828,000	73.4628	5,034,206	72.5296	1,523,500	69.4204
1937	45,319,926,000	78.4297	5,891,191	84.8765	1,742,510	79.3999
1938	39,219,611,793	67.8726	5,328,008	76.7625	1,623,539	73.9788
1939	43,800,066,464	75.7994	5,973,684	86.0650	1,769,468	80.6283
1940	48,671,563,000	84.2300	6,895,132	99.3407	2,032,049	92.5931
1941	62,728,951,000	108.5574	9,505,131	136.9439	2,540,936	115.7813
1942	89,457,212,000	154.8127	15,427,226	222.2657	4,245,784	193.4651
1943	101,469,131,000	175.6003	19,107,270	275.2854	5,935,601	270.4639
1944	100,678,673,000	174.2323	18,563,075	267.4450	5,121,613	233.3734
1945	91,855,860,000	158.9638	16,888,882	243.3243	4,608,151	209.9768
1946	84,184,932,000	145.6886	16,897,408	243.4471	5,033,708	229.3679
1947	89,082,924,000	154.1650	16,823,051	242.3758	5,257,490	239.5648
1948	87,400,000,000	151.2526	16,734,589	241.1013	5,200,556	236.9706
			Freight Revenue			
1928	$ 621,343,474	100.0000	$103,598,324	100.0000	$32,315,783	100.0000
1929	620,009,929	99.7854	105,423,366	101.7617	32,876,095	101.7339
1930	526,150,541	84.6795	92,193,900	88.8917	29,153,051	90.2130
1931	429,600,486	69.1406	81,054,728	78.2394	26,124,468	80.8412
1932	317,763,287	51.1413	57,865,198	55.8553	19,083,162	59.0521
1933	331,674,892	33.1675	60,169,000	58.0791	19,615,228	60.6986
1934	342,662,035	55.1486	61,490,101	59.3543	20,453,315	63.2920
1935	361,243,784	58.1391	60,044,884	57.9593	18,972,868	58.7108
1936	424,563,211	68.3299	67,000,202	64.6731	21,124,931	65.3703
1937	433,583,679	69.7816	73,479,493	70.9273	22,323,982	69.0807
1938	397,147,802	63.9176	69,531,352	67.1163	22,783,300	70.5021
1939	437,562,442	70.4220	75,066,180	72.4589	24,352,614	75.3583
1940	464,363,485	74.7354	80,005,034	77.2262	25,969,788	80.3626
1941	593,484,607	95.5163	104,788,596	101.1489	30,893,307	95.5982
1942	848,579,287	136.5717	170,696,931	164.7680	50,798,781	157.1950
1943	960,441,101	154.5749	207,998,817	200.7743	67,793,358	209.7840
1944	981,927,558	158.0330	205,487,893	198.3506	61,424,856	190.0770
1945	909,170,388	146.3233	185,411,420	178.9714	54,821,924	169.6444
1946	840,171,010	135.2184	188,810,190	182.2522	60,608,999	187.5523
1947	974,182,930	156.7865	207,272,552	200.0733	66,887,480	206.9808
1948	1,094,487,014	176.1485	232,212,859	224.1473	75,187,419	232.6647

Source: Column (1) from Ex Parte 168, Exhibit 34, Page 21, Column 9, and Page 5, Column 4.
Columns (3) and (5) from Annual Reports to Florida Railroad and Public Utilities Commission.

(Here follows 1 Paster, side folio 1116)

[fol. 1114] PROTESTANT'S EXHIBIT NO. 55

I.C.C. Docket No. 30140 Witness: Pettijohn

Statement Showing for the Atlantic Coast Line Railroad Company, Florida East Coast Railway Company and Seaboard Airline Railroad Company, Tons of Revenue Freight Originated, Terminated and Handled on the Systems and Within the State of Florida

	Originated			Terminated			Total Freight Handled	
	System	Florida	Percent Florida to System	System	Florida	Percent Florida to System	System	Florida
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
1928	$26,585,160	$13,150,724	49.466	$24,507,799	$12,149,220	49.573	$38,227,225	$16,908,771
1929	24,880,664	12,905,042	51.868	22,094,495	11,524,939	52.162	35,821,722	16,613,315
1930	23,289,927	12,560,232	53.930	21,218,240	10,973,190	51.716	33,304,612	15,664,651
1931	18,294,150	9,491,671	51.884	16,617,729	8,126,720	48.904	27,444,206	12,288,895
1932	11,942,651	6,959,816	58.277	11,216,060	6,193,414	55.219	17,991,394	8,850,632
1933	12,877,502	7,618,670	59.163	12,189,361	6,662,359	54.657	19,676,177	9,711,721
1934	14,595,039	8,699,296	59.604	14,327,378	8,049,042	56.179	22,337,281	11,145,337
1935	15,063,117	8,901,288	59.093	14,714,854	8,366,603	56.858	23,017,634	11,284,660
1936	17,509,749	9,790,042	55.912	17,284,148	9,354,095	54.120	27,226,394	12,739,136
1937	20,350,519	10,859,731	53.363	19,741,885	9,924,726	50.272	31,165,315	14,085,043
1938	18,782,838	10,464,585	55.714	18,055,499	9,522,665	52.741	28,676,871	13,710,756
1939	20,267,603	11,259,742	55.555	19,690,052	10,170,903	51.655	31,583,674	14,841,774
1940	24,228,479	13,355,749	55.124	25,124,243	13,033,241	51.875	38,556,217	17,991,855
1941	30,743,502	16,038,141	52.168	32,333,574	15,405,879	47.647	50,300,956	21,794,055
1942	39,531,366	20,624,125	52.172	42,680,162	18,889,034	44.257	69,295,386	30,801,529
1943	43,730,555	26,445,454	60.474	44,848,566	22,361,621	49.860	77,811,317	39,844,709
1944	37,203,700	21,517,671	57.837	39,127,936	17,570,438	44.905	70,929,669	33,169,795
1945	36,535,720	20,635,486	56.480	37,758,758	17,382,433	46.035	67,260,235	30,827,644
1946	44,453,321	24,838,155	55.875	43,414,079	21,881,822	50.403	72,779,531	36,218,041
1947	45,785,988	27,205,524	59.419	46,333,661	23,852,387	51.480	75,170,566	38,272,816
1948	47,492,654	29,281,298	61.654	47,814,140	24,822,452	51.914	77,640,172	40,283,802
1947 Percent to 1928	172.2239	206.8747	.....	189.0568	196.3285	.....	196.6414	226.3489
1947 Percent to 1939	225.9073	241.6176	.....	235.3151	234.5159	.....	238.0045	257.8722

Source: Annual reports to Florida Railroad and Public Utilities Commission.

[fol. 1116]

PROTESTANT'S EXHIBIT No. 57

I.C.C. Docket No. 30140

Witness: Pettijohn

Statement Showing Revenue Ton Miles, Freight Revenue, and Revenue Per Ton Mile for Atlantic Coast Line Railroad Company, Florida East Coast Railway Company, and Seaboard Airline Railroad Company, for the System and in the State of Florida; also Revenue Per Ton Mile for the Southern Region

	Revenue Ton Miles (Thousands)			Freight Revenue			Revenue per Ton Mile				
	System (1)	Florida (2)	Percent Florida to System (3)	System (4)	Florida (5)	Percent Florida to System (6)	System (7)	Florida (8)	Percent Florida to System (9)	Southern Region (10)	Percent Florida to So. Region (11)
1928	$ 6,940,895	$2,194,600	31.63	$103,598,324	$32,315,783	31.19	$.01493	$.01473	98.66	$ 01078	136.64
1929	6,935,742	2,128,251	30.69	105,423,366	32,876,095	31.18	.01520	.01545	101.64	.01088	142.00
1930	6,205,842	1,987,952	32.03	92,193,900	29,153,051	31.62	.01486	.01466	98.65	.01082	135.49
1931	5,325,589	1,570,996	29.50	81,054,728	26,124,468	32.23	.01522	.01663	109.26	.01104	150.63
1932	3,678,932	1,135,773	30.87	57,865,198	19,083,162	32.98	.01573	.01680	106.80	.01089	154.27
1933	3,919,344	1,205,608	30.76	60,169,000	19,615,228	32.60	.01535	.01627	105.99	.01072	151.77
1934	4,183,691	1,307,993	32.70	61,490,101	20,453,315	33.26	.01470	.01495	101.70	.01043	143.34
1935	4,213,464	1,321,971	31.37	60,044,884	18,972,868	31.60	.01425	.01697	119.09	.01029	164.92
1936	5,034,206	1,523,500	30.26	67,000,202	21,124,931	31.53	.01331	.01387	104.21	.01002	138.42
1937	5,891,191	1,742,510	29.58	73,479,493	22,323,982	30.38	.01247	.01281	102.73	.00959	133.58
1938	5,328,008	1,623,539	30.47	69,531,352	22,783,300	32.77	.01305	.01403	107.51	.01013	138.50
1939	5,973,684	1,769,468	29.62	75,066,180	24,352,614	32.44	.01257	.01376	109.47	.01001	137.46
1940	6,895,132	2,032,049	29.47	80,065,034	25,969,788	32.46	.01160	.01278	110.17	.00954	133.96
1941	9,505,131	2,540,936	26.73	104,788,596	30,893,307	29.48	.01102	.01216	110.34	.00946	128.54
1942	15,427,226	4,245,784	27.52	170,696,931	50,798,781	29.76	.00106	.01196	108.14	.00949	126.03
1943	19,107,270	5,935,601	31.06	207,998,817	67,793,358	32.59	.01089	.01142	104.87	.00948	120.46
1944	18,563,075	5,121,613	27.59	205,487,893	61,424,856	29.89	.01107	.01199	108.31	.00976	122.85
1945	16,888,882	4,608,151	27.29	185,411,420	54,821,924	29.57	.01098	.01190	108.38	.00993	119.84
1946	16,897,408	5,033,708	29.79	188,810,190	60,608,999	32.10	.01117	.01204	107.79	.01000	120.40
1947	16,823,051	5,257,490	31.25	207,272,552	66,887,480	32.27	.01232	.01272	103.25	.01094	116.27
1948	16,734,589	5,200,556	31.08	232,212,859	75,187,419	32.38	.01388	.01446	104.18	na,	na

na--Not available.

Source: Columns 1, 2, 4, and 5—Annual Reports to Florida Railroad and Public Utilities Commission.
Columns 3, 6–9, 11—Computed.
Column 10—Exhibit 3, Page 22, Column 4, Ex Parte 168.

[fol. 1117]

PROTESTANT'S EXHIBIT No. 58

I. C. C. Docket No. 30

Witness: Pettijohn

Statement Showing Revenue Passenger Miles and Passenger Revenue for the Southern Region, and for the System and State of Florida, for the Atlantic Coast Line Railroad, Florida East Coast Railway, and Seaboard Airline Railroad

	Southern Region (1)	Percent Relationship to 1928 (2)	A.C.L., F.E.C., and S.A.L. System (3)	Percent Relationship to 1928 (4)	A.C.L., F.E.C., and S.A.L. Florida (5)	Percent Relationship to 1928 (6)
			Revenue Passenger Miles			
1928	$ 3,716,867,146	100.0000	$ 725,121,832	100.0000	$ 276,609,874	100.0000
1929	3,484,067,452	93.7367	666,924,478	91.9741	244,543,973	88.4075
1930	2,834,414,494	76.2582	569,846,522	78.5863	207,617,146	75.0577
1931	2,126,822,183	57.2208	426,790,799	58.8578	155,531,372	56.2277
1932	1,705,849,809	45.8948	341,618,066	47.1118	119,332,986	43.1413
1933	1,908,069,873	51.3354	390,052,741	53.7913	137,810,717	49.8213
1934	2,327,025,853	62.6072	545,598,398	75.2423	198,155,005	71.6370
1935	2,408,800,233	64.8073	596,404,873	82.2489	219,105,376	79.2110
1936	2,872,584,446	77.2851	740,841,132	102.1678	272,630,060	98.5612
1937	3,129,714,748	84.2030	851,456,560	117.4226	311,827,986	112.7321
1938	2,450,534,566	65.9301	670,568,297	92.4766	242,441,745	87.6475
1939	2,752,293,323	74.0487	827,605,775	114.1333	296,978,508	107.3637
1940	3,174,123,856	85.3978	1,082,578,325	149.2961	390,574,138	141.2004
1941	4,436,307,370	119.3561	1,547,716,861	213.4423	479,941,974	173.5086
1942	9,059,343,329	243.7360	3,151,887,467	434.6701	952,052,659	344.1861
1943	14,676,003,548	394.8488	4,869,186,667	671.4991	1,570,005,508	567.5884
1944	15,275,642,597	410.9817	5,143,608,790	709.3441	1,543,974,163	558.4775
1945	13,731,916,159	369.4487	4,699,113,305	648.0447	1,475,136,344	533.2913
1946	8,801,747,356	236.8055	2,858,662,940	394.2321	862,165,966	314.6902
1947	6,099,292,374	164.0977	2,081,481,827	287.0527	680,502,770	246.0154
1948	5,400,000,000	145.2836	1,871,288,757	258.0654	621,121,487	224.5478

Statement Showing Revenue Passenger Miles and Passenger Revenue for the Southern Region, and for the System and State of Florida, for the Atlantic Coast Line Railroad, Florida East Coast Railway, and Seaboard Airline Railroad

	Southern Region (1)	Percent Relationship to 1928 (2)	A.C.L., F.E.C., and S.A.L. System (3)	Percent Relationship to 1928 (4)	A.C.L., F.E.C., and S.A.L. Florida (5)	Percent Relationship to 1928 (6)
			Passenger Revenue			
1928	$ 118,296,618	100.0000	$ 25,382,711	100.0000	$ 9,787,738	100.0000
1929	108,739,548	91.9211	23,408,608	92.2226	8,727,958	89.1724
1930	85,651,470	72.4040	19,741,067	77.7737	7,302,440	74.6080
1931	60,193,973	50.8839	14,173,711	55.8400	5,201,480	53.1428
1932	38,908,933	32.8910	8,916,253	35.1273	3,225,956	32.9592
1933	35,403,693	29.9279	7,989,205	31.4750	2,886,217	29.4881
1934	40,186,144	33.9707	10,207,644	40.2149	3,760,011	38.4155
1935	41,764,061	35.3045	11,123,212	43.8220	4,111,714	42.0088
1936	49,524,722	41.8649	13,624,297	53.6755	5,041,482	51.5081
1937	54,984,192	46.4799	16,038,205	63.1855	5,895,100	60.2294
1938	48,432,816	40.9418	14,335,561	56.4777	5,247,456	53.6126
1939	48,437,267	40.9456	15,227,668	59.9923	5,531,755	56.5172
1940	53,639,106	45.3429	18,483,983	72.8212	6,707,133	68.5259
1941	76,110,045	64.3383	26,557,104	104.6267	8,212,639	83.9074
1942	174,201,818	147.2585	60,135,396	236.9148	13,292,058	186.8875
1943	291,716,260	246.6973	94,961,989	374.1208	30,836,044	315.0477
1944	304,141,192	257.1005	100,861,592	397.3634	30,925,771	315.9644
1945	271,849,358	229.8032	91,358,423	359.9238	29,394,585	300.3205
1946	176,674,572	149.3488	57,873,131	228.0022	18,003,819	183.9426
1947	127,774,672	108.0121	45,197,956	178.0659	15,484,541	158.2035
1948	125,404,694	106.0087	43,281,659	170.5163	14,769,112	150.8940

Source: Column (1) from Ex Parte 168, Exhibit 34, Page 21, Column 14, and Page 5, Column 5.
Columns (3) and (5) from annual reports to Florida Railroad and Public Utilities Commission.

(Here follows 1 Paster, side folio 1118)

[fol. 1118]

PROTESTANT'S EXHIBIT No. 59

I.C.C. Docket No. 30140

Witness: Pettijohn

Statement Showing Revenue Passenger Miles, Passenger Revenue, and Revenue per Passenger Mile for Atlantic Coast Line Railroad Company, Florida East Coast Railway Company and Seaboard Airline Railroad Company for the System and in the State of Florida; Also Revenue per Passenger Mile for Southern Region

	Revenue Passenger Miles			Passenger Revenue			Revenue per Passenger Mile				
	System (1)	Florida (2)	Percent Florida to System (3)	System (4)	Florida (5)	Percent Florida to System (6)	System (7)	Florida (8)	Percent Florida to System (9)	Southern Region (10)	Percent Florida to So. Region (11)
1928	$ 725,121,832	$ 276,609,874	38.14	$ 25,382,711	$ 9,787,738	38.56	$ .03500	$ .03538	101.09	$ .03185	111.08
1929	666,924,478	244,543,973	36.67	23,408,608	8,727,958	37.29	.03510	.03569	101.68	.03125	114.21
1930	569,846,522	207,617,146	36.43	19,741,067	7,302,440	36.99	.03464	.03517	101.53	.03029	116.11
1931	426,790,799	155,531,372	36.44	14,173,711	5,201,480	36.70	.03321	.03344	100.69	.02843	117.62
1932	341,618,066	119,332,986	34.93	8,916,253	3,225,956	36.18	.02610	.02703	103.56	.02277	118.71
1933	390,052,741	137,810,717	35.33	7,989,205	2,886,217	36.13	.02048	.02094	102.25	.01851	113.13
1934	545,598,398	198,155,005	36.32	10,207,644	3,760,011	36.84	.01871	.01898	101.44	.01725	110.03
1935	596,404,873	219,105,376	36.74	11,123,212	4,111,714	36.97	.01865	.01877	100.64	.01726	108.75
1936	740,841,132	272,630,060	36.80	13,624,297	5,041,482	37.00	.01839	.01849	100.54	.01716	107.75
1937	851,456,560	311,827,986	36.62	16,038,205	5,895,100	36.76	.01884	.01890	100.32	.01748	108.12
1938	670,568,297	242,441,745	36.15	14,335,561	5,247,456	36.60	.02138	.02164	101.22	.01970	109.85
1939	827,605,775	296,978,508	35.88	15,227,668	5,531,755	36.33	.01840	.01863	101.25	.01745	106.76
1940	1,082,578,325	390,574,138	36.08	18,483,983	6,707,133	36.29	.01707	.01717	100.59	.01677	102.81
1941	1,547,716,861	479,941,974	31.01	26,557,104	8,212,639	30.92	.01716	.01711	99.71	.01706	100.29
1942	3,151,887,467	952,052,659	30.21	60,135,396	18,292,058	30.41	.01908	.01921	100.68	.01918	100.16
1943	4,869,186,667	1,570,005,508	32.24	94,961,989	30,836,044	32.47	.01950	.01964	100.72	.01990	98.69
1944	5,143,608,790	1,543,974,163	30.02	100,861,532	30,925,771	30.66	.01961	.02003	102.14	.01992	100.55
1945	4,699,113,305	1,475,136,344	31.39	91,358,423	29,394,585	32.18	.01944	.01993	102.52	.01982	100.55
1946	2,858,662,940	862,165,966	30.16	57,873,131	18,003,819	31.11	.02024	.02088	103.16	.02001	104.35
1947	2,081,481,827	680,502,770	32.69	45,197,956	15,484,541	34.26	.02171	.02275	104.79	.02092	108.75
1948	1,871,288,757	621,121,487	33.19	43,281,639	14,769,112	34.12	.02313	.02378	102.81	na	na

na—Not available.

Source: Columns 1, 2, 4, 5—Annual reports to Florida Railroad and Public Utilities Commission.
Columns 3, 6, 7, 8, 9, 11—Computed.
Column 10—Exhibit 3, Page 22, Ex Parte 168.

[fol. 1119]

PROTESTANT'S EXHIBIT No. 60

I.C.C. Docket No. 30140

Witness: Pettijohn

Statement Showing for Selected Items Comparative Operations of the Atlantic Coast Line Railroad Company, Florida East Coast Railway Company and Seaboard Air Line Railroad Company for the System and in the State of Florida and for the Southern Region—Calendar Year 1947.

	A.C.L. Railroad, S.A.L. Railroad, and F.E.C. Railway Combined		(C)
	(A) Florida	(B) System	Southern Region
Freight Service			
1. Train Miles	$ 7,469,161	$ 23,228,851	$ 105,659,738
2. Locomotive Miles—Road	7,633,456	24,483,777	113,098,649
3. Locomotive Miles—Switching	1,019,647	2,314,693	7,615,027
4. Car Miles	285,750,539	974,660,434	4,583,482,000
5. Revenue Ton-Miles (Thousands)	5,257,490	16,823,051	89,082,923
6. Revenue Tons per Train Mile	703.89	724.23	843.11
7. Revenue Tons per Locomotive Mile—Road	688.74	687.11	787.66
8. Revenue Tons per Car-Mile	18.40	17.26	19.44
Passenger Service			
9. Train Miles	6,236,680	18,183,834	61,008,188
10. Locomotive Miles—Road	6,363,266	18,401,312	58,182,372
11. Locomotive Miles—Switching	6,861	11,079	13,818
12. Motor Car Miles		81,699	7,302,730
13. Car Miles	65,978,001	195,154,028	568,494,685
14. Revenue Passenger Miles	680,502,770	2,081,481,827	6,099,292,374
15. Revenue Passengers per Train Mile	112.98	114.47	99.97
16. Revenue Passengers per Locomotive Mile—Road	106.94	113.12	104.83
17. Revenue Passengers per Car Mile	10.31	10.67	10.73

Source: Column (A) Items 1–5 and 9–14 from Annual Reports to Florida Railroad & Public Utilities Commission.
Columns (B) and (C)—I. C. C. Comparative Statement Railway Operating Statistics dated September, 1948—Statement No. 48200, calendar year 1947.
Item 14, Column (C), Exhibit 3, Page 21, Column 14, Ex Parte 168.
Items 6–8 and 15–17—Computed.

[fol. 1120] PROTESTANT'S EXHIBIT NO. 61

I.C.C. Docket No. 30140 Witness: Pettijohn

Revenue Miles Statistics
Atlantic Coast Line, Florida East Coast, and Seaboard Airline

	System				Florida			
	Total	Freight	Passenger	Percent Passenger to Total	Total	Freight	Passenger	Percent Passenger to Total
				Train Miles				
1936	28,797,383	13,514,924	15,282,459	53.069	10,180,947	4,673,118	5,507,829	54.099
1937	30,203,005	14,477,115	15,725,890	52.067	10,535,116	4,908,770	5,626,346	53.406
1938	28,194,213	13,473,797	14,720,416	52.211	9,909,770	4,857,886	5,051,884	50.979
1939	29,547,060	14,800,762	14,746,298	49.908	10,503,377	5,225,056	5,278,321	50.254
1940	31,741,842	15,659,012	16,082,830	50.668	11,343,925	5,297,755	6,046,170	53.299
1941	35,285,204	18,688,665	16,596,539	47.035	11,909,794	6,080,104	5,829,690	48.949
1942	42,382,011	23,547,675	18,834,336	44.439	14,048,525	7,466,176	6,582,349	46.854
1943	46,163,643	25,348,953	20,814,690	45.089	15,746,795	8,416,524	7,330,271	46.551
1944	46,345,321	25,276,529	21,068,792	45.460	15,243,407	8,042,490	7,200,917	47.240
1945	43,979,692	23,989,949	19,989,743	45.452	14,428,990	7,652,953	6,776,037	46.961
1946	42,272,991	24,328,225	17,944,766	42.450	13,712,889	7,833,350	5,879,489	42.876
1947	41,412,685	23,228,851	18,183,834	43.909	13,705,841	7,469,161	6,236,680	45.504
1948	39,840,026	22,406,608	17,433,418	43.759	13,268,690	7,229,892	6,038,798	45.512
1947 to 1936	143.807	171.876	118.985	.....	134.622	159.832	113.233	.....
				Locomotive Miles				
1936	34,055,394	18,851,289	15,204,105	44.645	12,161,532	6,509,073	5,652,459	46.478
1937	36,129,950	20,455,096	15,674,854	43.385	12,657,145	5,884,440	5,772,705	45.608
1938	33,694,472	19,042,633	14,651,839	43.484	12,017,610	6,742,587	5,275,023	43.894
1939	35,753,347	20,722,226	15,031,121	42.041	12,981,414	7,268,645	5,712,769	44.007
1940	38,763,969	22,076,477	16,687,492	43.049	14,028,027	7,501,518	6,526,509	46.525
1941	48,710,968	26,598,958	22,112,010	45.394	16,293,980	8,618,569	7,675,411	47.106
1942	60,799,373	33,915,347	26,884,026	44.218	19,776,676	10,685,278	9,091,398	45.970

[fol. 1120]

PROTESTANT'S EXHIBIT NO. 61

I.C.C. Docket No. 30140

Witness: Pettijohn

Revenue Miles Statistics
Atlantic Coast Line, Florida East Coast, and Seaboard Airline

	System				Florida			
	Total	Freight	Passenger	Percent Passenger to Total	Total	Freight	Passenger	Percent Passenger to Total
			Locomotive Miles					
1943	66,184,118	36,862,312	29,321,806	44.303	22,095,827	12,175,343	9,920,484	44.898
1944	58,354,139	35,655,563	22,698,576	38.898	19,482,961	11,647,620	7,835,341	40.216
1945	55,355,645	34,054,337	21,301,308	38.481	18,516,928	11,213,493	7,303,435	39.442
1946	53,918,050	35,166,099	18,751,951	34.779	17,979,549	11,738,051	6,241,498	34.714
1947	52,981,988	34,036,012	18,945,976	35.759	17,873,280	11,282,535	6,590,745	36.875
1948	51,340,930	33,215,070	18,125,860	35.305	17,471,728	11,100,778	6,370,950	36.464
1947 to 1936	155.576	180.550	124.611	.....	146.966	173.336	116.600	.....
			Car Miles					
1936	620,216,411	497,573,530	122,642,881	19.774	192,182,508	147,896,470	44,286,038	23.044
1937	694,179,569	561,957,622	132,221,947	19.047	210,910,408	163,598,190	47,312,218	22.432
1938	664,403,562	541,595,214	122,808,348	18.484	209,897,511	166,749,437	43,148,074	20.557
1939	704,280,755	574,685,919	129,594,836	18.401	219,541,499	173,372,789	46,168,710	21.030
1940	751,203,882	609,115,883	142,087,999	18.915	237,442,801	185,270,916	52,171,885	21.972
1941	892,554,798	736,740,713	155,814,085	17.457	260,498,979	206,389,009	54,109,970	20.772
1942	1,169,989,828	973,352,188	196,637,640	16.807	336,878,545	270,182,019	66,696,526	19.798
1943	1,320,683,531	1,088,879,641	231,803,890	17.552	392,704,147	312,759,446	79,944,701	20.357
1944	1,346,125,178	1,100,815,270	245,309,908	18.223	395,831,262	314,022,057	81,809,205	20.668
1945	1,270,367,711	1,036,892,549	233,475,162	18.379	370,394,097	293,481,368	76,912,729	20.765
1946	1,223,479,950	1,022,743,133	200,736,817	16.407	367,097,569	302,060,944	65,036,625	17.716
1947	1,175,185,587	979,400,138	195,785,449	16.660	354,285,665	288,151,398	66,134,267	18.667
1948	1,169,016,271	976,272,445	192,746,826	16.488	353,226,763	287,653,829	65,572,934	18.564
1947 to 1936	189.480	196.835	159.639	.....	184.349	194.833	149.334	.....

[fol. 1121]

I. C. C. Docket No. 30140

PROTESTANT'S EXHIBIT No. 62

Witness: Pettijohn

Operating Revenues
Atlantic Coast Line, Florida East Coast, Seaboard Air Line

Freight Revenue Account No. 101

	System	Florida	Percent Florida System	Intrastate	Percent of System	Percent of Florida
1928	$103,598,324	$32,315,783	31.19	$13,762,010	13.28	42.59
1929	105,423,366	32,876,095	31.18	12,319,969	11.69	37.47
1930	92,193,900	29,153,051	31.62	11,263,913	12.22	38.64
1931	81,054,728	26,124,468	32.23	8,932,946	11.02	34.19
1932	57,865,198	19,083,162	32.98	6,580,151	11.37	34.48
1933	60,169,000	19,615,228	32.60	5,906,235	9.82	30.11
1934	61,490,101	20,453,315	33.26	6,705,810	10.91	32.79
1935	60,044,884	18,972,868	31.60	6,128,039	10.21	32.30
1936	67,000,202	21,124,931	31.53	6,265,400	9.35	29.66
1937	73,479,493	22,323,982	30.38	5,922,328	8.06	26.53
1938	69,531,352	22,783,300	32.77	6,101,174	8.77	26.78
1939	75,066,180	24,352,614	32.41	6,643,263	8.85	27.28
1940	80,005,034	25,969,788	32.46	8,154,738	8.15	31.40
1941	104,788,596	30,893,307	29.48	9,708,205	9.26	31.42
1942	170,696,931	50,798,781	29.76	14,252,583	8.35	28.06
1943	207,998,817	67,793,358	32.59	18,203,828	8.75	26.85
1944	205,487,893	61,424,856	29.89	13,618,233	6.62	22.17
1945	185,411,420	54,821,924	29.57	12,036,539	6.49	21.96
1946	188,810,190	60,608,999	32.10	14,598,358	7.73	24.09
1947	207,272,552	66,887,480	32.27	15,950,328	7.70	23.85
1948	232,212,859	75,187,419	32.38	17,432,305	7.51	23.19
Percent of 1947 to 1928	200.0732	206.9808	.....	115.9011	.....	.....

Passenger Revenue Account No. 102

	System	Florida	Percent Florida System	Intrastate	Percent of System	Percent of Florida
1928	$ 25,382,711	$ 9,787,738	38.56	$ 3,195,272	12.59	32.65
1929	23,408,608	8,727,958	37.29	2,502,824	10.69	28.68
1930	19,741,067	7,302,440	36.99	1,881,276	9.53	25.76
1931	14,173,711	5,201,480	36.70	1,242,767	8.77	23.89
1932	8,916,253	3,225,956	36.18	836,264	9.38	25.92
1933	7,989,205	2,886,217	36.13	744,772	9.32	25.80
1934	10,207,644	3,760,011	36.84	997,503	9.77	26.53
1935	11,123,212	4,111,714	36.97	1,052,310	9.46	25.59
1936	13,624,297	5,041,482	37.00	1,191,195	8.74	23.63
1937	16,038,205	5,895,100	36.76	1,256,563	7.83	21.32
1938	14,335,561	5,247,456	36.60	1,020,367	7.12	19.45
1939	15,227,668	5,531,755	36.33	976,556	6.41	17.65
1940	18,483,983	6,707,133	36.29	1,172,656	6.34	17.48
1941	26,557,104	8,212,639	30.92	1,305,001	4.91	15.89
1942	60,135,396	18,292,058	30.42	2,753,488	4.58	15.05
1943	94,961,989	30,836,044	32.47	4,604,022	4.85	14.93
1944	100,861,592	30,925,771	30.66	4,031,706	4.00	13.04
1945	91,358,423	29,394,585	32.18	5,383,994	5.89	18.32
1946	57,873,131	18,003,819	31.11	3,069,641	5.30	17.05
1947	45,197,956	15,484,541	34.26	2,166,366	4.79	13.99
1948	43,281,659	14,769,112	34.12	1,752,784	4.05	11.87
Percent of 1947 to 1928	178.0659	158.2034	.....	67.7991	.....	.....

Source: Annual reports to Florida Railroad and Public Utilities Commission.

(Here follows 1 paster, side folio 1122)

[fol. 1122]

I. C. C. Docket No. 30140

PROTESTANT'S EXHIBIT No. 63

Witness: Pettijohn

Statement Comparing the Combined Net Railway Operating Income of the Atlantic Coast Line Railroad, Seaboard Airline Railroad, and Florida East Coast Railway to the Southern Region for the Years Indicated

			Freight Service					Passenger Service					Unassignable	
Line	Code*	Year	1 Revenues	2 Expenses	3 Net Revenues	4 Operating Ratio	5 Net Railway Operating Income	6 Revenues	7 Expenses	8 Net Revenues	9 Operating Ratio	10 Net Railway Operating Income	11 Revenues	12 Expenses
1	1	1944	$1,000,589,000	$647,178,000	$353,411,000	64.68	$115,631,000	$370,597,000	$217,340,000	$153,257,000	58.65	$52,002,000	$17,000	$20,000
2	2	1944	208,431,572	133,202,811	75,228,761	63.91	23,016,161	120,433,905	68,626,722	51,807,183	56.98	18,908,290	.....	.....
3	3	1944	62,595,701	39,496,975	23,098,726	63.10	7,249,412	38,547,379	22,505,872	16,041,507	58.38	6,876,025	.....	.....
4	1	1945	928,503,000	739,973,000	188,530,000	79.70	75,095,000	336,541,000	239,887,000	96,654,000	71.28	45,542,000	4,000	4,000
5	2	1945	188,208,423	174,414,471	13,793,952	92.67	2,441,278	110,269,703	80,671,396	29,598,307	73.16	18,533,042	.....	.....
6	3	1945	56,050,117	50,071,242	5,978,875	89.33	993,097	36,842,037	25,922,950	10,919,087	70.36	6,236,432	.....	.....
7	1	1946	860,258,000	687,180,000	173,078,000	79.88	99,038,000	230,171,000	220,154,000	10,017,000	95.65	5,861,000D	6,000	5,000
8	2	1946	192,173,862	156,338,099	35,835,763	81.35	23,059,339	72,878,181	70,819,254	2,058,927	97.17	297,815	.....	.....
9	3	1946	62,358,178	48,889,244	13,468,934	78.40	8,679,453	23,740,078	22,833,299	906,779	96.18	219,450D	.....	.....
10	1	1947	1,005,476,000	727,469,000	278,007,000	72.35	161,195,000	189,288,000	221,943,000	32,655,000D	117.25	57,425,000D	7,000	5,000
11	2	1947	211,832,489	160,065,731	51,766,758	75.56	30,476,427	62,792,723	72,846,442	10,053,719D	116.01	17,092,733D	.....	.....
12	3	1947	69,629,886	52,471,374	17,158,512	75.36	10,511,889	22,403,405	25,281,538	2,878,133D	112.85	6,455,844D	.....	.....
13	1	1948	na	na	na	na	na	na	na	na	na	na	na	na
14	2	1948	236,828,399	169,717,976	67,110,423	71.66	41,332,943	60,856,899	76,791,474	15,934,575D	126.18	21,163,295D	.....	.....
15	3	1948	77,698,923	54,503,808	23,195,115	70.15	13,913,181	21,498,965	26,530,960	5,031,995D	123.41	7,318,970D	.....	.....

D—Deficit.

*Code: (1) Southern Region.
(2) Three Roads—System.
(3) Three Roads—Florida.

Source: Lines 1, 4, 7, 10—Carriers' Exhibit 34, Page 26, Ex Parte 168.
Lines 2, 3, 5, 6, 8, 9, 11, 12, 14, 15—Carriers' Annual Reports to Florida Railroad and Public Utilities Commission.

[fol. 1123]

PROTESTANT'S EXHIBIT NO. 64

I. C. C. Docket No. 30140 Witness: Pettijohn

Net Railway Operating Income Separated Between Freight, Passenger, and Unassigned for the Calendar Years Shown for the Combined Operations of the Atlantic Coast Line Railroad, Florida East Coast Railway and Seaboard Airline Railroad, and for the Southern Region.

	Total	Freight	Passenger	Unassigned
		Three Roads Combined		
1936	$ 8,214,133	$ 15,151,862	$ 7,030,276D	$ 92,547
1937	10,029,340	16,154,177	6,124,837D	.....
1938	4,869,730	13,001,072	8,131,342D	.....
1939	8,119,942	16,210,612	8,090,670D	.....
1940	9,146,786	17,037,262	7,890,476D	.....
1941	22,768,444	25,236,315	2,467,871D	.....
1942	63,015,497	45,535,694	17,479,803	.....
1943	54,582,342	32,979,889	21,602,453	.....
1944	41,924,451	23,016,161	18,908,290	.....
1945	20,974,320	2,441,278	18,533,042	.....
1946	23,357,154	23,059,339	297,815	.....
1947	13,383,694	30,476,427	17,092,733D	.....
1948	20,169,648	41,332,943	21,163,295D	.....
		Southern Region		
1936	$ 80,925,000	$111,057,000	$31,463,000D	$1,331,000
1937	74,873,000	101,544,000	27,726,000D	1,055,000
1938	60,518,000	93,861,000	33,355,000D	12,000
1939	80,514,000	114,168,000	33,659,000D	5,000
1940	81,956,000	117,403,000	35,448,000D	1,000
1941	140,666,000	161,063,000	20,395,000D	2,000D
1942	221,367,000	190,777,000	30,591,000	1,000D
1943	201,979,000	143,721,000	58,258,000	.....
1944	167,630,000	115,631,000	52,002,000	3,000D
1945	120,637,000	75,095,000	45,542,000	.....
1946	93,178,000	99,038,000	5,861,000D	1,000
1947	103,772,000	161,195,000	57,425,000D	2,000
1948	na	na	na	na

D—Deficit.

na—Not available.

Source: Annual reports to Florida Railroad and Public Utilities Commission.

[fol. 1125] I.C.C. Docket No. 30140

PROTESTANT'S EXHIBIT No. 66

Witness: Pettijohn

Investment, Net Railway Operating Income and Rate of Return of Florida East Coast Railway Company—Calendar Year—1947

	Total	Freight	Passenger
Investment in Railway Property used in transpn service	87,674,062	.....	.....
Depreciation & Amortization Reserve	13,848,064	.....	.....
Investment in Transportation Property less recorded depreciation & amortization	73,825,998	42,193,330	31,632,668
Working Capital—9.606%	2,275,016	1,222,481	1,052,535
Rate Base	76,101,014	43,415,811	32,685,203
Net Railway Operating Income	1,544,281	3,572,614	2,028,333 R
Rate of Return	2.0292	8.2288	.....
Net Railway Operating Income Revised to reflect $1,400,000 excess profit tax refund applicable to prior years—per Ex. S14	144,281	2,172,614	2,028,333 R
Rate of Return	.1896	4.9927	.....

R denotes red figure.

[fol. 1126] I.C.C. Docket No. 30140

PROTESTANT'S EXHIBIT No. 67

Witness: Pettijohn

Investment, Net Railway Operating Income and Rate of Return of Florida East Coast Railway Company—Calendar Year—1948

	Total	Freight	Passenger
Investment in Railway Property used in transpn service	87,272,435	.....	.....
Acq. Adj., Donations, Grants, Depreciation & Amortization	13,972,175	.....	.....
Investment in Railway Property used in transpn service less recorded depr. & amor.	73,300,260	36,746,666	36,553,594
Working Capital—9.606 of Operating Capital	2,295,624	1,177,855	1,117,769
Rate Base	75,595,884	37,924,521	37,671,363
Net Operating Income	1,855,052	4,685,134	2,830,082 R
Rate of Return	2.4539	12.3538	.....

R denotes red figure.

[fol. 1127]

I.C.C. Docket No. 30140

PROTESTANT'S EXHIBIT No. 68

Witness: Pettijohn

Net Railway Operating Income
Three Months Ended March 31

District or Region	1948	1947	Percentage Increase
New England Region	$ 503,210	$ 2,172,953	76.8*
Great Lakes Region	15,293,511	20,015,399	23.6*
Central Eastern Region	16,975,926	18,961,599	10.5*
Eastern District	$ 32,772,647	$ 41,149,951	20.4*
Pocahontas Region	$ 16,106,356	$ 25,213,973	36.1*
Southern Region	33,892,793	31,253,038	8.4
Southern District	$ 49,999,149	$ 56,467,011	11.5*
Northwestern Region	$ 3,835,879d	$ 9,284,093	....
Central Western Region	42,185,134	47,039,678	10.3*
Southwestern Region	21,525,529	22,303,202	3.5*
Western District	$ 59,874,784	$ 78,626,973	23.8*
United States	$142,646,580	$176,243,935	19.1*
Atlantic Coast Line RR Co., Florida East Coast Ry Co., Seaboard Air Line RR Co.			
System	$ 9,271,924	$ 7,363,977	25.9
Florida	3,478,857	2,747,827	26.6

d—deficit.
*—decrease.

Authorities:

I.C.C. Statement No. M-100 for three months ended March 31, 1948, for Districts and Regions.

March 1948 Mo. Rept Ser. No. 463 of Association of American Railroads, Bureau of Railway Economics.

Monthly reports of revenues and expenses to Florida Railroad and Public Utilities Commission.

[fol. 1124]

PROTESTANT'S EXHIBIT NO. 65

I. C. C. Docket No. 30140

Witness: Pettijohn

Actual Calendar Year 1948 Revenues, Expenses and Net Railway Operating Income Compared with Similar Data for Three Months, Six Months, and Nine Months, Expanded by Factors Representing a Twenty Year Average. Atlantic Coast Line Railroad Company, Florida East Coast Railway Company, and Seaboard Air Line Railroad Company.

	Freight Revenue	Passenger Revenue	Total Revenue	Operating Expense	Net Railway Operating Revenue	Net Railway Operating Income
Three months ended March 31, 1948	$ 62,162,035	$14,498,993	$ 83,304,684	$ 63,472,029	$19,832,655	$ 9,271,924
Ratio of Year	27.1377	31.6333	28.1290	25.4701		39.0454
Expanded to yearly basis—Combined	229,061,545	45,834,589	296,152,313	249,202,119	46,950,194	23,746,521
Expanded to yearly basis—Individual	229,172,723	45,683,177	296,441,980	249,058,101	47,383,879	23,898,967
Six months ended June 30, 1948	124,455,235	24,055,759	160,237,220	125,808,326	34,428,894	15,291,203
Ratio of year	53.6163	55.3691	53.8155	50.1390		64.9655
Expanded to yearly basis—Combined	232,122,013	43,446,180	297,752,915	250,919,096	46,833,819	23,537,421
Expanded to yearly basis—Individual	232,269,993	43,357,468	298,021,580	250,861,482	47,160,098	23,766,987
Nine months ended September 30, 1948	175,181,701	33,458,131	225,328,097	183,593,282	41,734,815	16,881,889
Ratio of year	74.7192	77.1213	75.0372	73.1051		75.4559
Expanded to yearly basis—Combined	234,453,394	43,383,775	300,288,519	251,136,079	49,152,440	22,373,186
Expanded to yearly basis—Individual	234,511,784	43,352,856	300,355,868	251,117,264	49,238,704	22,236,473
Actual—1948	232,212,859	43,281,659	297,685,298	246,509,450	51,175,848	20,169,648
Actual—1947	207,272,552	45,197,956	274,625,212	232,912,173	41,713,039	13,383,694
1947 Net Railway Operating Income adjusted to exclude $1,400,000 Federal Income Tax Refund to F. E. C. and $1,030,000 occasioned by A. C. L. change in accounting for Foreign Line tickets						$10,953,694

Source: Association of American Railroads, Bureau of Railway Economics, Monthly Report Series.
Annual reports to Florida Railroad and Public Utilities Commission.

[fol. 1128]

I.C.C. Docket No. 30140

PROTESTANT'S EXHIBIT No. 69

Witness: Pettijohn

Net Railway Operating Income
Six Months Ended June 30

District or Region	1948	1947	Percentage Increase
New England Region	$ 10,635,903	$ 6,870,054	54.80
Great Lakes Region	56,141,212	50,374,104	11.45
Central Eastern Region	63,174,639	53,195,167	18.76
Eastern District	$129,950,854	$110,439,325	17.67
Pocahontas Region	$ 42,554,729	$ 47,478,267	10.37*
Southern Region	69,828,951	56,921,937	22.67
Southern District	$112,383,680	$104,400,204	7.65
Northwestern Region	$ 28,529,409	$ 34,202,192	16.59*
Central Western Region	90,994,784	81,608,181	11.50
Southwestern Region	49,080,193	43,121,164	13.82
Western District	$168,604,386	$158,931,537	6.08
United States	$410,938,920	$373,771,066	9.94
Atlantic Coast Line RR Co., Florida East Coast Ry. Co., Seaboard Air Line RR Co.			
System	$ 15,291,203	$ 10,126,803	51.0
Florida	5,402,403	3,379,639	59.9

* indicates decrease.

Authorities:

I.C.C. Statement No. M-100, for six months ended June 30, 1948 for Districts and Regions.

Mo. Rept. Ser. No. 466, Association of American Railroads, Bureau of Economics for three principal Florida railroad system returns.

Monthly reports of revenues & expenses to Florida Railroad and Public Utilities Commission.

[fol. 1129]

I.C.C. Docket No. 30140

PROTESTANT'S EXHIBIT NO. 70

Witness: Pettijohn

Net Railway Operating Income
Nine Months Ended September 30

District or Region	1948	1947	Percentage Increase
New England Region	$ 17,074,828	$ 9,164,645	86.5
Great Lakes Region	101,453,285	67,508,177	50.3
Central Eastern Region	127,146,221	81,226,019	56.7
Eastern District	$245,674,334	$157,898,841	55.6
Pocahontas Region	$ 72,990,912	$ 67,157,536	8.7
Southern Region	104,706,217	72,707,082	44.0
Southern District	$177,697,129	$139,864,618	27.0
Northwestern Region	$ 73,017,196	$ 61,356,581	19.0
Central Western Region	166,173,800	136,184,274	22.0
Southwestern Region	80,185,355	64,548,935	24.2
Western District	$319,376,351	$262,089,790	21.9
United States	$742,747,814	$559,853,249	32.7
Atlantic Coast Line RR Co., Florida East Coast Ry. Co., Seaboard Air Line RR Co.			
System	$ 16,881,889	$ 8,308,929	103.2
Florida	5,189,081	1,940,571	167.4

Authorities:

I.C.C. Statement No. M-100, for nine months ended September 30, 1948, for Districts and Regions.

Mo. Rept. Ser. No. 469, Association of American Railroads, Bureau of Economics for three principal Florida railroad system returns.

Monthly reports of revenues and expenses to Florida Railroad & Public Utilities Commission.

[fol. 1130] I.C.C. Docket No. 30140

PROTESTANT'S EXHIBIT NO. 71

Witness: Pettijohn

Net Railway Operating Income
Twelve Months Ended December 31

District or Region	1948	1947	Percentage Increase
New England Region	$ 23,848,868	$ 12,605,819	89.2
Great Lakes Region	138,697,035	93,419,416	48.5
Central Eastern Region	172,251,664	109,777,962	56.9
Eastern District	$ 334,797,567	$215,803,197	55.1
Pocahontas Region	$ 95,080,793	$ 88,622,970	7.3
Southern Region	138,971,107	103,771,466	33.9
Southern District	$ 234,051,900	$192,394,436	21.7
Northwestern Region	$ 101,670,938	$ 91,381,376	11.3
Central Western Region	222,558,773	190,627,441	16.8
Southwestern Region	109,273,145	90,231,833	21.1
Western District	$ 433,502,856	$372,240,650	16.5
United States	$1,002,352,323	$780,438,283	28.4
Atlantic Coast Line RR Co., Florida East Coast Ry. Co., Seaboard Air Line RR Co.			
System	$ 20,169,648	$ 13,383,694	50.7
Florida	6,595,211	4,111,045	60.4

Authorities:
I.C.C. Bureau of Transport Economics & Statistics, Statement No. M-100, for calendar years ended December 31, 1948 and December 31, 1947.
Annual Reports to Florida Railroad and Public Utilities Commission.

[fol. 1131] PROTESTANT'S EXHIBIT 98

Before the Interstate Commerce Commission

Docket No. 30140

Increases in Florida Intrastate Rates

Witness L. P. Hearn

Q. Mr. Hearn, please state your name, address and occupation, and detail as briefly as may be your experience in the paper industry and the duties of your position.

A. My name is L. P. Hearn, and I am Assistant Traffic Manager of International Paper Co., Mobile, Alabama. I have been engaged in traffic and transportation work since 1930, and have occupied my present position since 1937. I am familiar with paper mill operations and with the transportation problems involved in the procurement of raw materials and the distribution of finished products. One of my principal duties is the handling of rate adjustments on such raw materials and finished products.

Q. In what business is the International Paper Company engaged?

A. In the production and distribution of paper and paper commodities, with mills located at various points.

Q. Are its operations conducted in the State of Florida and, if so, where?

A. The mill of International Paper Company in Florida is located at Panama City.

Q. What are the commodities produced and distributed from that mill?

A. Predominantly container pulpboard made from unbleached sulphate kraft woodpulp.

Q. What is the basic raw material consumed by International Paper Company at Panama City in the manufacture of container pulpboard?

A. Pulpwood.

Q. What kind of pulpwood is used by your plant at Panama City?

A. Pine pulpwood is predominantly used at that plant. This pulpwood is second growth pine trees which are or have been grown on lands in Florida and Georgia which have been previously cut over in taking out the timber suitable for the production of lumber and lumber products. A considerable amount of this pulpwood consists of thinnings from Government or private lands, portions of trees not suitable for lumber and trees that have become deformed [fol. 1132] or diseased in connection with Naval Stores operations. The greater volume of this wood used at our Panama City mill comes from the farm lots in the states of Florida and Georgia.

Q. What are the transportation or rate-making characteristics of the commodity?

A. Pulpwood is a very low-grade commodity, worth less than $5.00 a ton on basis of the price of $11.25 per cord of 128 cu. ft. f. o. b. railroad cars which we are now paying. It moves in large volume throughout the year, in any sort of railroad equipment available, chiefly in wood rack and box cars, and loss and damage claims are unknown. My later testimony will include reference to these and other transportation factors.

Q. What does a cord of this pulpwood weigh?

A. In its green condition the average weight is approximately 5,000 ponds per cord of 128 cu. ft., and practically all of the pulpwood shipped, received and used in the paper mills of the South and Southwest, including Panama City, is in green condition.

Q. How many cords of pulpwood does it take to make one ton of finished paper products, including the product of the Panama City mill which you say is predominantly container pulpboard?

A. Approximately 2 cords.

Q. How many tons of pulpwood does it take to make one ton of paper products including container pulpboard made at your Panama City Mill?

A. Approximately 5 tons. As already stated, the weight per cord is approximately 5,000 pounds, and it takes 2 cords of pulpwood to make one ton of paper products. In other words, it takes approximately 5 tons of pulpwood to make one ton of paper products, including container pulpboard.

Q. Since you make only one ton of paper products from 5 tons of pulpwood, what becomes of the other 4 tons of pulpwood?

A. Five thousand pounds, or 2½ tons, represents water which, of course, is lost in the process of converting the pulpwood into paper products. Six hundred pounds represents bark which is wasted. The remaining 2400 pounds of the lost 4 tons represents wood substances dissolved in the process of digesting the wood for the making of paper.

Q. May it be understood that when you refer to paper you are referring to the products of the Panama City mill, predominantly container pulpboard?

A. Yes, the reference includes those paper commodities and is directed chiefly to them.

Q. In other words, Mr. Hearn, if I correctly understand the detail, you must transport 5 tons of pulpwood inbound to the mill in order to produce one ton of paper, in this case chiefly container pulpboard, outbound from the mill?

[fol. 1133] A. That is correct.

Q. What is the annual volume of pulpwood consumption at the Panama City mill of International Paper Company?

A. Approximately 600,000 cords.

Q. What was your average freight rate per cord of pulpwood on the tonnage of that commodity moving to the Panama City mill during the year 1948?

A. $5.62 per cord, or approximately 50 percent of the value of the pulpwood f.o.b. cars at point of origin.

Q. Has pulpwood's contribution to the revenue of the carriers during the past several years substantially increased, and if so, why and how?

A. In 1939 our average freight rate to Panama City was $2.37.

1940	$2.34
1941	2.45
1942	2.87
1943	3.22
1944	3.62
1945	3.69
1946	3.76
1947	4.46
1948	5.62

In other words, we have come from an average freight rate of $2.37 per cord in 1939 to an average freight rate of $5.62 per cord in 1948, which is an increase of 137.13 percent. During this same period freight rates on pulpwood interstate within the South have been increased 50 percent, that is, 20 percent under Ex Parte 162 and 25 percent under Ex Parte 166. On Florida intrastate traffic freight rates have been increased 30.8 percent under the two proceedings mentioned. The most important contributing factor to this substantial increase in the trans-

portation charges on pulpwood to Panama City, Fla., was the adoption in 1941 of sound replanting practices by the paper industry throughout the South. The paper plants in the South and Southwest have generally been located where there was a supply of pine pulpwood, but after several years of operation it was found desirable and necessary for the paper industry in the South and Southwest to permanently discontinue the practice of intensely cutting trees in the local areas surrounding these plants. Therefore, in 1941 the Southern Pulpwood Conservation Association was organized and worked out with the paper industry in the South and Southwest certain minimum cutting rules to be observed by the paper industry in procuring its pulpwood. This program also had and still has the energetic support and advocacy of the United States Forestry Service and the various state forestry departments of the Southern states. My first exhibit #99 is a copy of those rules, which are presently observed by the paper industry in the South in the procurement of pulpwood. We reiterate that these are minimum cutting rules, and, generally speaking, the paper industry observes more rigid conservation cutting practices. The paper industry for the past several years has found it necessary to go out long distances and cover vast areas in the procurement of pulpwood. This practice is in the interest of sound conserva-
[fol. 1134] tion and reforestation, but being required to go out longer distances for the wood has resulted in substantially increasing the transportation charges paid to the rail carriers.

Q. In the Ex Parte 162 and 166 proceedings before the Interstate Commerce Commission did the paper industry undertake to obtain special consideration of the rates on pulpwood from the standpoint of advocating a lower percentage of increase on pulpwood than on commodities generally?

A. Yes, sir, this was rather fully done in both cases, the principal presentation being through the American Paper and Pulp Association, of which International Paper Company is a member. In Ex Parte 162 the increase on pulpwood was made 20 percent throughout the nation, the same as was done on most other commodities, and in Ex

Parte 166 the increase was made 20 percent in the West, 25 percent in the South, and 25 percent in Official territory. The only special consideration given pulpwood was 25 percent in Official versus 30 percent on commodities generally, but this special treatment was not, in our opinion, an adequate answer to our pleas and needs. In Ex Parte 166 we particularly emphasized the very close parallel as between the iron and steel industry and the pulp and paper industry in their production and distribution operations. The plants and markets of both industries are far flung and the competitive market conditions and relationships are very similar. Pulpwood corresponds to iron ore, while woodpulp is equivalent to pig iron. Paper and paperboard made from woodpulp are comparable to the structural shapes, sheets, rods, bars, etc., produced in a steel mill, and paper containers, bottle caps, cartons, and other finished paper forms have their similarity in fabricated steel products. In both Ex Parte 162 and 166 the railroads proposed and the Commission approved special consideration for iron ore and manufactured iron and steel articles. Statement No. 4832 issued in September, 1948 by the Bureau of Transport Economics and Statistics of the Commission entitled "Estimates of Average Percentage Increases in Freight Rates authorized in Ex Parte 166 by Commodity Classes" shows iron ore was advanced in said proceeding 19.6 percent, whereas pulpwood is shown as having been advanced 23.3 percent. We are still unable to understand why pulpwood was not at least considered as favorably in both of these two proceedings as iron ore. This dissatisfaction goes back to Ex Parte 123 when the Commission prescribed 10 percent on pulpwood, but at the same time prescribed only 5 percent on lumber and articles taking the lumber rates. In other words, the low grade raw material of pulpwood was required to pay more than the finished products of lumber and lumber articles.

Q. How is pulpwood purchased, particularly from the standpoint of f.o.b. or delivered prices?

A. All rail pulpwood is purchased on basis of an f.o.b. shipping point price. The transportation charges are invariably paid and borne by the paper mills. In other words we have a uniform f.o.b. origin price which is paid to all

shippers. The short-haul shipper or seller of the wood receives the same price as the long-haul shipper. Obviously, the seller of the wood is not affected by the level of the freight rate, and he is not affected by the character of the commerce, that is, to say whether it is interstate commerce or intrastate commerce.

Q. Is the movement of pulpwood over the railroads in [fol. 1135] single car or multiple car lots?

A. Pulpwood is volume traffic for the carriers. At our Panama City, Fla. plant the receipts will average approximately 100 cars per day. There are many points in Florida loading pulpwood to Panama City where three or four cars are loaded at one time and the local trains in performing the gathering or pick-up service invariably have several cars in each train even though the loading at some of the points may be a single carload.

Q. Is this pulpwood traffic to which you refer a sporadic or seasonal traffic, or does it move in volume throughout the year?

A. It moves in substantial volume throughout the year. It is neither seasonal nor sporadic. The average paper mill generally operates 24 hours per day, and approximately 360 days per year.

Q. What type of railroad equipment is used in the movement of pulpwood to Panama City, Fla.?

A. What is generally known as wood rack cars and old box cars, generally referred to as "rough loaders". Very seldom is a first-class box car used in the transportation of pulpwood.

Q. Briefly describe these wood rack cars.

A. A preponderance of these wood rack cars are old boxes or flat cars which are no longer suitable for general use and are converted in the shops of the railroads to rack cars. Generally speaking, most all of the rack cars have solid wood or steel ends, with rail or wood risers about 5 inches in height along the edge of the floor so that two rows of pulpwood can be loaded on the cars. The wood slightly slants toward the middle of the car, which holds the load intact in transit.

Q. Now what percentage of your wood to Panama City moves in these so-called wood rack cars?

A. Approximately 50 percent.

Q. Has there been an increase in the trucking of pulpwood to your plant at Panama City, Fla.?

A. Yes, sir. During the year 1947 we received direct at our plant at Panama City 68,906 cords. During the year 1948 we received 83,738 cords. Our truck program for the year 19[redacted] even under the existing rate increases, calls for 120,000 cords by motor truck direct, and pulpwood today is being trucked by the owners, producers, and cutters thereof in their private trucks to Panama City, Fla., for distances of as much as 120 miles.

Q. Please explain the conditions which make pulpwood very susceptible to private motor truck transportation under a high rail rate structure.

A. First, it should be borne in mind that every stick of pulpwood which moves to a paper mill via rail must first be handled by motor truck to a railroad station. I do not know the exact average motor truck haul from the farms or [fol. 1136] woodlands to railroad stations, but I estimate that it is somewhere in the neighborhood of 8 or 10 miles. When pulpwood is to be loaded in railroad cars and shipped via rail, the truck as it comes from the source of production must have two men on it, that is, the driver and a helper. The weight of green pulpwood is such that it cannot be unloaded from trucks into railroad equipment or unloaded from trucks on to wood rack cars without two men. In other words, it takes two men to do the job, and in some instances three are used. It is estimated by our Wood Procurement Division that it costs, leaving out of the picture entirely the cost of operating the truck, $1.00 per cord to load pulpwood into or on railroad cars. When railroad cars are not available the pulpwood is generally banked somewhere near the railroad station, and then when cars are available the wood must be picked up again and transferred a short distance and loaded into railroad cars. The cost of picking up pulpwood which has been banked near a railroad station and subsequently loaded in railroad cars is $1.50 per cord. When pulpwood is trucked directly to the mill only one man is needed on the truck, and that is the driver. At Panama City, Fla., these trucks are unloaded by a large locomotive crane by the placement of

wire loops around the edges of the entire load, and within a couple of minutes the driver is on his way back for another load. This is the picture from the standpoint of the pulpwood producer or seller transporting his own pulpwood. There is another substantial added economy to the paper company in receiving pulpwood by truck versus railroad cars. It is much cheaper to unload pulpwood at the plant arriving by motor truck than it is pulpwood unloaded from wood rack cars, which is also a mechanical process, but the difference in cost is substantial when the pulpwood is received in box cars. As previously stated, approximately 50 percent of our pulpwood at Panama City is received in box cars, and the cost of unloading pulpwood from box cars versus motor truck is close to 50c per cord.

Q. What is the status of the movement of pulpwood by water to Panama City?

A. At the present time we are not receiving any pulpwood by water at Panama City, although we are making a survey with the possible establishment of water service in the transportation of pulpwood from the west coast of Florida as far down as Tampa. This involves the expenditure of approximately $1,000,000 for tugs and equipment. The operation, if established, will be somewhat similar to our Georgetown, S. C. operation where this year we received 123,960 cords of pulpwood by water and where arrangements are being made to increase this water tonnage an additional 100,000 cords per year. Our barge transportation to Panama City, Fla. was discontinued several years ago, but the transportation charge on pulpwood is such an important item to a paper mill as to merit and require the recourse to any operation which will hold this pulpwood transportation burden within reasonable bounds, because pulpwood and the transportation charges paid thereon is the bloodstream of a paper mill.

Q. Do you have another exhibit?

A. Yes, I present Exhibit No. 100, which is an excerpt from Statement No. 4823 of the Bureau of Transport Economics and Statistics of the Interstate Commerce Commission, issued in July, 1948, entitled: "Freight Revenue and Wholesale Value at Destination of Commodities Transported on Class I Steam Railroads in the United States".

In considering this exhibit it should be borne in mind that [fol. 1137] the f. o. b. origin price of pulpwood shipped by rail is $11.25 per cord, and the average freight rate to Panama City, Fla. for the year 1948 was $5.62 per cord, or an exact ratio of freight to value of 49.96 percent. In these general increase cases there is dire need for more consideration to be given this low grade important raw material, such as the railroads and the Commission have given to iron ore and such as we requested on pulpwood.

Q. To what section of the country does Panama City, Fla. ship its pulpboard?

A. For the first five months of 1947, and this period can certainly be considered representative, we shipped 621 tons to the Southwest, 5,561 tons to the South, 84,636 tons to Official territory, and 9,200 tons to WTL Zones C and 1. From this distribution it will be observed that virtually all of our tonnage goes to the North and Mid-West where the hauls involved are for long distances and where the freight rates are high. On this outbound tonnage we are paying an increase of 22½ percent under Ex Parte 162 and 25 percent under Ex Parte 166, and in neither of these proceedings did we request any special treatment for any of the products which we ship or receive, other than pulpwood.

Q. Mr. Hearn, introduce and explain your next exhibit.

A. My next Exhibit No. 101 is a statement showing the percentage increases which have been made in the interstate Southern and Southwestern pulpwood rates in the last three general increase cases, viz.: Ex Parte 123, 162 and 166. On this same statement we have also shown the percentage of increases allowed on intrastate traffic by the various state commissions in the South and Southwest.

Q. What is the position of your company in connection with the petition of the carriers seeking an additional increase on pulpwood in Florida of 11 percent under Ex Parte 162 and 5 percent under Ex Parte 166.

A. It is our position that the petition of the carriers should be denied. Florida pulpwood is certainly bearing its full share of the transportation burden. By reference to Exhibit No. 101, the last one introduced, it will be observed that in other southern states in which the petition-

ing carriers here are also the important carriers, the increases on pulpwood are generally less than those proposed by them in this proceeding. Measured in terms of percentage increase, Florida pulpwood is now contributing to the revenues of these petitioners as much as is the Georgia pulpwood and in much greater measure that are the increases in Alabama, North Carolina, South Carolina, and Virginia. International Paper Company takes the definite position in this proceeding that there is no justification for further increase of the Florida pulpwood rates and it asserts further that establishment of any such further increase will substantially reduce rather than increase railroad revenues.

[fol. 1138] PROTESTANT'S EXHIBIT 103

I. C. C. Docket 30140

Outline of Proposed Testimony of Mr. Carl Dodson, Traffic Manager, Newport Industries, Inc., to Be Presented in Connection With the Movement of Wastewood from Florida Origins to Pensacola, Florida

Q. Please state your name and address.

A. Carl Dodson, Pensacola, Fla.

Q. What position do you hold?

A. I am Traffic Manager for Newport Industries, Inc., with its general offices at Pensacola, Fla.

Q. How long have you held that position?

A. A little over 7 years.

Q. Won't you please outline briefly your duties?

A.

Q. Thus, you are in direct charge of rates and routes in connection with all of the company's in and outbound shipments?

A. Yes.

Q. Won't you please describe briefly the business which Newport Industries is engaged in?

A. We are engaged in the manufacture of naval stores consisting of rosin, pine oil, turpentine, etc., extracted from resinous wastewood by what is known as the steam distillation process. This process consists of first stripping

the wood; shredding it into fine splinters; placing the splinters in large retorts where they are covered with petroleum solvents and subjected to high temperatures under pressure, which extracts the naval stores and chemicals from [fol. 1139] the wood. The products thus obtained are drawn off and separated by refractionation and other processes.

Q. What other methods of making naval stores are there?

A. There are three methods of making naval stores. One is the old tree bleeding method with which I am sure everyone is familiar. There are two modern methods (1) the steam distillation process which I stated we use and (2) the destructive wood distillation process which some other plants use. The two modern processes are similar to the extent that both of them use resinous wastewood as a raw material.

Q. Just what do you mean by "resinous wastewood?"

A. Resinous wastewood sometimes known as "stump" or "tarwood," consists of old pine stumps, knots, butts, limbs, and boughs. Instead of bleeding the trees in the woods, gathering the sap and taking it to the manufacturing point for refining, we purchase resinous wastewood. The material is largely gathered from wastelands, i.e., where lumber operations have previously taken place. The stumps are either blasted from the ground by explosive charge or uprooted by bulldozers. This material is just what the name implies, i.e., wastewood. If you were to see a car of it in transit, you would think it was trash going out to be thrown away or burned.

Q. What kind of equipment does it move in?

A. Our movement to Pensacola is in box cars because those are the cars that are most readily available to us here in Florida. However, it can move in any type of car that has wheels and a bottom. In the movement to Pensacola, we utilize any type of box cars that will hold together. [fol. 1140] The commodity simply isn't susceptible to damage. It can stand all the rain or trash or rough handling that comes its way, and setting fire to it is the only way I know it can be damaged. Prior to the development of the steam distillation and destructive wood processes,

some thirty-five years ago, all of this material was simply completely wasted. It is a movement which the railroads did not enjoy prior to that time. This movement has been brought about by the research of the naval stores industry to utilize waste material in the production of high grade manufactured products. At Pensacola, Fla., from these old tree stumps and tree boughs, which used to be waste material, we have developed 150 useful chemicals. These commodities move out on rates ranging from 19 per cent of first class in the case of rosin to 70 per cent in the case of terpineol.

Q. To what weight does it generally load per car?

A. The weight per car varies rather widely, running from as low as 35,000 lbs. to as high as 100,000 lbs.

Q. What accounts for this widely varying weight per car?

A. There are two factors. First, the material itself comes in all sorts of odd sizes and shapes so that when it is loaded in the car it cannot be stacked in any orderly way, but simply is more or less dumped in, and therefore, the weight per cubic foot or yard, as loaded, varies greatly. Generally speaking, the stumps and butts will load heavier than the boughs, limbs, and knots. The second factor which accounts for the widely varying average loading, is the different sizes of box cars that are placed. The L&N still owns a large number of old 36 foot box cars with [fol. 1141] 7½ foot proofs and which are very narrow. As previously stated, we utilize any equipment they have. Where we have the extremely light loads of 35,000 and 40,000 lbs., they are generally brought about by utilization of this equipment.

Q. Do you have any actual figures as to the loading of this material over a period of time?

A. Yes. In the fall of 1945 immediately before we took this situation up with the railroads in an effort to get a voluntary adjustment to Pensacola, we made a test of 412 cars. On those 412 cars, the lightest load was 40,000 lbs., and the maximum 74,000 lbs., with an over-all average of 52,164 lbs. In order to bring our figures up to date, I have just made a survey of our Fla. shipments intrastate for the first three months of 1949. That survey covers the move-

ment of 569 cars. The lightest loaded car during that time was 37,500 lbs., and the heaviest loaded was 103,500 lbs., with an over-all average of 58,440 lbs.

Q. In general, where does the production of naval stores in the United States take place?

A. The producers are all located in a belt along the Atlantic and Gulf Coast of the United States. It starts just south of Norfolk, Va., and runs around the Atlantic Coast to the Gulf Coast as far as East Texas, but the center of production is in southeast Georgia close to the Atlantic Ocean.

Q. What are the principal consuming areas in the United States for naval stores.

A. By far the largest consuming area is that portion of the United States located north of Washington, D. C., and east of a line drawn from Buffalo, New York to Pitts- [fol. 1142] burgh, Pennsylvania. I would say that the next largest consumption is in the central West centering around Chicago and Detroit. The balance of the consumption is scattered in various places over the United States.

Q. At what points in the Southeastern States are plants located for the manufacture of naval stores by the two modern methods?

A. In North Carolina there is a plant at Fayetteville. In Georgia there is a plant at Brunswick. In Florida there are plants at Jacksonville, Gainesville and Pensacola, the last named plant being our own. In Alabama there is a plant at Mobile and one at Bay Minette, the one at Bay Minette being our own plant. In Mississippi there are plants at Columbia, Gulfport, Hattiesburg, two at Laurel, and one at Goodyear. In Eastern Louisiana there are plants at Covington and New Orleans. The plants at Brunswick, Ga., and Hattiesburg, Miss., belong to our largest competitor.

Q. Are you at a competitive disadvantage as compared with the plant at Brunswick to the largest consuming area in the United States?

A. Yes. In order to do business in Trunk Line Territory, it is necessary for us to meet the delivered prices of our competitor at Brunswick. I have prepared an exhibit to illustrate this. On my Exhibit No. 104 I have compared

the rates on rosin and turpentine from Brunswick, Ga., and Pensacola, Fla., to representative points in Trunk Line Territory which as I previously testified is the largest single consuming area in the United States. Taking New York, N. Y., as an example, prior to July 1, 1946, the rate from Brunswick on rosin was 41 cents and our rate from [fol. 1143] Pensacola 48 cents, or a differential of 7 cents against us. On Turpentine, the Brunswick rate was 63 cents, and our rate 74 cents, or a differential of 11 cents against us.

Q. What has been the effect of the general increases under Ex Parte 162 and 166 on these differentials?

A. The 7 cent differential on rosin, which existed prior to July 1, 1946, has now been increased to 11 cents, without taking into account the Ex Parte 168 surcharge. While the 11 cent differential on turpentine has now been increased to 18 cents, again without considering the Ex Parte 168 surcharge.

Q. Now when you go the other direction or to the next largest consuming area at Chicago, do you have to meet the delivered prices from the Hattiesburg, Mississippi plant?

A. Yes.

Q. Just what does that mean?

A. On my Exhibit No. 105 I have compared the rates from Hattiesburg and Pensacola to representative destinations in C. F. A. and I. F. A. territories. Taking Chicago, Illinois as an example, prior to July 1, 1946, the rate from Hattiesburg on rosin was 41 cents and from Pensacola 43 cents, or a differential of 2 cents against us. On turpentine, the Hattiesburg rate was 63 cents and the Pensacola rate 69 cents or a differential of 6 cents against us.

Q. What has been the effect of the Ex Parte 162 and 166 general increases on these differentials against you?

A. The 2 cent differential on rosin has remained the same. The same. The 6 cent differential on turpentine [fol. 1144] has been increased to 10 cents. The 2 cent differential on rosin to Chicago which has remained the same during these Ex Parte increases is not typical of the general situation in the Midwest. Generally, the spreads there in favor of Hattiesburg have been widened.

The reason for the 2 cent differential at Chicago remaining constant is because the Hattiesburg to Chicago rate is a Class rate and was subject to increases of 22½ per cent and 25 per *per* cent, whereas, our rate to Chicago is a Commodity rate and was increased 20 per cent and 25 per cent. Detroit is a better example where our 2 cent disadvantage prior to July 1, 1946 has been widened to 4 cents by the addition of the Ex Parte 162 and 166 increases. Again, in all of these illustrations I have not taken into account the Ex Parte 168 surcharge.

Q. Just what significance do your Exhibit Nos. 104 and 105 have so far as this proceeding is concerned?

A. It shows that we are laboring at a great disadvantage because our largest competitor has plants located closer to each of the two largest consuming areas in the United States. With this natural disadvantage due to our greater distance from the consuming markets, we simply are not in a position to stand a higher level of freight rates—mile for mile—on our principal inbound commodity—wastewood—than is available to our competitors.

Q. Then what is your primary purpose of appearing in this proceeding?

A. It is to prevent increases being made in the level of the intrastate rates on wastewood from Florida origins to our plant at Pensacola which would result in those rates [fol. 1145] again becoming unconscionably higher than both the level of intrastate and interstate rates now existing to the plants of our principal competitors.

Q. How many tons of this wastewood do you bring in for each ton of outbound products you ship out?

A. Approximately five.

Q. If you suffer from a disability of 1 cent per 100 lbs. on your wastewood inbound as compared with your competitors, just what does that mean to you?

A. It means a disability of 5 cents per 100 lbs. on our outbound products.

Q. You refer to both the level of inter and intrastate rates on wastewood: Is the movement of wastewood generally interstate or intrastate?

A. I would say that relatively the interstate movement of wastewood is very small. Generally speaking, based on

my experience, I think the great majority of the movement is intrastate. The largest single interstate movement I know anything about would be that from Northeastern and North Central Florida to Brunswick, Georgia. Other than that, most interstate movements are limited to situations where a plant is located near a State line and traffic moves from just over the state line to it. At Pensacola we do get some wood from points in Alabama just north of the Alabama-Florida State Line. Judging by the rates which have been negotiated and published, I would say that the plant at Hattiesburg gets some wood from points just across the Mississippi-Alabama line.

[fol. 1146] Q. From what part of Florida do you draw your wastewood?

A. We are limited to that portion of Florida west of Tallahassee.

Q. Have you ever purchased any wood from points in Florida east of Tallahassee?

A. Yes. We have purchased some, but generally speaking, the rate situation is so much more favorable to the plant at Brunswick, Ga., that we simply cannot compete with them in the purchase of this wood.

Q. Have you in the past been forced to pay relatively higher transportation charges even on the wood which you purchase from points in Florida west of Chattahoochee than those your competitor at Brunswick pays when purchasing wood at points in southeastern and central Georgia and from points in northeastern and north central Florida?

A. We certainly have, as will be shown in more detail by another witness.

Q. Are you still laboring under the disadvantage of relatively higher rates from points in Florida west of Chattahoochee.

A. For the first time, since the addition of the Ex Parte 162 and 166 increases to the rates from points in Georgia and northern Florida to Brunswick and the denial of those increases to Pensacola, we have a level of rates approximating that available to our competitor. I say "approximating." I believe on the average it is about equal. As

will be shown later, there are some instances today where our rates are still relatively on a higher basis even after Ex Parte 162 and 166 increases have been added to the rates to Brunswick.

[fol. 1147] Q. Has this inequity in your inbound raw material rates been the subject of prior handling with the Florida railroads?

A. Yes. Back as early as December 1945, we brought this situation to the attention of the Florida railroads and asked for relief.

Q. What sort of a responde did you get to your handling with the Florida railroads?

A. They refused to take any steps whatever to ameliorate the great disadvantage we were laboring under with respect to our raw material rates.

Q. What step did you take next?

A. On August 24, 1946, we filed a complaint with the Florida Railroad Commission against the rates on wastewoods from origins in Florida to Pensacola, Fla.

Q. Has that complaint ever been brought to trial?

A. No.

Q. Can you tell us why the complaint has never been tried?

A. After several delays brought about by various causes the complaint was finally set down for hearing by the Florida Commission on January 22, 1947. In the meantime, the Florida railroads had filed their petition with the Florida Commission seeking general increases in Ex Parte 162 and they asked us to consent to a postponement of the trial of this complaint until the general Ex Parte increase case was out of the way. At that time we anticipated that this would result in a delay of only a few months. However, since that time, Ex Parte 166 and 168 have come along and the delay has now run to 2½ years.

Q. Do you have anything else to add?

A.

(A-57).

[fol. 1148] PROTESTANT'S EXHIBIT 106

I. C. C. Docket 30140

Outline of Proposed Testimony of Mr. A. M. Ribe, Consulting Traffic Manager, Newport Industries, Incorporated, to Be Presented in Connection With the Movement of Wastewood from Florida Origins to Pensacola, Florida

My name is A. M. Ribe. My address is 912 South 21st Street, Birmingham, Alabama. I am Consulting Traffic Manager for Newport Industries, Inc., with their main offices at Pensacola, Florida.

The preceeding witness, Mr. Dodson, has outlined the operation of our company and the purpose of our appearing in this proceeding.

I have made a survey of the rates applicable generally throughout Southern Territory on resinous wastewood and that survey is incorporated in my Exhibit No. 107 consisting of 20 pages.

I believe the various portions of this Exhibit are largely self-explanatory, but to be sure they are clearly understood I will briefly run over them now.

The survey of rates contained in my Exhibit No. 107 begins with the base rates, i.e., those in effect on June 30, 1946 and traces all of the various interstate and intrastate adjustments up through whatever increase is applicable up through Ex Parte 166 today. I have not taken Ex Parte 168 into account at all as those increases are not involved in this proceeding. I have shown the rates including Ex Parte 162 increases and Ex Parte 166 increases separately in my exhibits for the reason that this proceeding comprehends both of those increases at least insofar as resinous wastewood is concerned.

[fol. 1149] On page 1, I have shown the scales of rates applicable on resinous wastewood moving in intrastate traffic within the State of Florida, for *single* line hauls. This is a maximum scale and applies to all movements in the State of Florida except where specific point to point commodity rates are published for the same distances on a lower basis or wherever commodity rates may be pub-

lished for distances in excess of 300 miles. The scale is subject to a weight of 40,000 lbs. You will note particularly that there is no basis for making joint line rates except the often condemned old and out moded method of combinations of the single line factors less 20 per cent over three or more carriers. To Pensacola, the scale shown on page 1 of my Exhibit No. 107 is the *only* basis of rates available. On Sheet 2 I show a scale of rates published per car of 60,000 lbs. and applicable from ACL and SAL stations in Florida to Gainesville, Fla., which rates are considerably lower than those shown on page 1 and in the case of Gainesville, alternate with the rates shown on page 1. There are some specific rates for distances over 300 miles published to Jacksonville, but I have not incorporated them in my exhibit. That about summerizes all the rates there are on resinous wastewood in the State of Florida.

On page 3, I show the scale of rates which is applicable as a maximum basis between points in the State of Alabama. Comparing the base single line scale within Alabama with the base single line scale in Florida you will see that they are the same except that the Alabama scale terminates at 260 miles. The important difference between [fol. 1150] the Alabama scale and the Florida scale is that in the Alabama base scale provision is made for joint line hauls at through rates and shippers and receivers of this commodity in Alabama are not forced to pay combination rates for two and three line hauls.

On page 4, I have shown the maximum scale having application within the State of Georgia for both single and joint line hauls subject to a minimum weight of 40,000 lbs. By comparing the Georgia base single line scale with the Florida base single line scale, you will see that the Georgia scale is the same as the Florida scale, except at the 100 and 160 mile blocks, the Georgia scale is ¼ cent lower.

Again, in Georgia, shippers and receivers in the State are not forced to pay high combination rates for joint line hauls, but have a scale of through rates available for such movements.

In addition to the scale of maximum rates subject to a

minimum of 40,000 lbs. shown on page 4, there is another and lower basis of rates generally available to the plant at Brunswick, Ga. This alternate basis of rates is similar to the basis published from ACL and SAL stations in Florida to Gainesville, Fla., in that it is published in cents per car of 60,000 lbs. In some instances, these 60,000 lb. rates to Brunswick are published as specific point to point rates and in other instances, they are published as mileage scales. On page 5, we have shown both the 40,000 lb. and 60,000 lb. minimum rates available to Brunswick, Ga., from stations on the ACL RR Western Division in Georgia. For comparative purposes, on this and other parts of this ex- [fol. 1151] hibit, we have converted all of the rates to equivalents per net ton. You will see that in the base rates, for instance, from Browntown a distance of only 27 miles, the lower 60,000 lb. rates result in a saving of 7 cents per ton to the receiver at Brunswick.

On pages 7 thru 11, I show in detail the dual basis of rates available for both single and joint line hauls to our largest competitor at Brunswick. I call your attention to the fact that the lower 60,000 lb. rates which alternate with the 40,000 lb. rates are published not only for single line application, but in many instances, for joint line application.

So far, I have dealt with the intrastate rates in the three states of Florida, Alabama and Georgia. To get a picture of the rate level applying to this commodity within the South, it is necessary to deal with the intrastate rates since as Witness Dodson pointed out, the interstate movement is negligible.

However, there are a large number of interstate rates published from origins in Florida to Brunswick, Ga., which generally are published in cents per car of 60,000 lbs. From ACL System Line stations in Florida to Brunswick, Ga., over the ACL System direct, these interstate 60,000 lb. rates seem to be uniformly 5 per cent higher than similar rates within Georgia, but are still considerably lower than the 40,000 lb. rates available to Pensacola from the same origin territory. These rates are set out on pages 12 and 13. On pages 14 and 15, I show the 60,000 lb. per car rates available from FEC and GS&F stations in Florida

[fol. 1152] to Brunswick for joint line hauls. These rates do not seem to vary consistently with distance, but as will be shown later are still on a considerably lower basis than the 40,000 lb. rates available to Pensacola.

On pages 16 and 17, I show rates for single and joint line hauls within the State of Mississippi also subject to a minimum weight of 60,000 lbs. On pages 19 and 20, I show rates in cents per net ton, minimum weight 40,000 lbs., available from Frisco stations in Florida and Alabama to Pensacola, Fla.

To thoroughly understand the situation, it is first necessary to grasp the differences in the base or June 30, 1946 rates to Pensacola and the same rates available to other similar plants in Southern territory. On June 30, 1946 there were three principal differences in the basis of rates available from Florida origins to Pensacola from those available between other points, all three of which differences operated to severely penalize us at Pensacola in drawing in our principal raw material. The first of these differences was that in certain instances our single line rates even subject to a minimum of 40,000 lbs. were somewhat higher than the single line rates subject to the same minimum available within Georgia: *Incidentally, while I have not shown it on my exhibit, the Georgia single line scale for a minimum of 40,000 lbs. is also published on interstate traffic from points in Southern Georgia to Jacksonville, Fla.* The second and one of the very important handicaps from which we were suffering was the lack of a lower basis of rates on the 60,000 lb. minimum which was available to our competitors on both intra and interstate traffic. This dual scale of rates constituted a real advantage to them and a real disadvantage to us when you con- [fol. 1153] sider the wide variations in the loading of this material as testified to by Witness Dodson. The third and perhaps greatest advantage to our competitors and disadvantage to us, was the availability of through joint line scales on both the 40,000 and 60,000 lb. minimum rates, whereas, there were no joint line rates whatever available to us at Pensacola.

Those are the competitive disadvantages we were laboring under in December 1945 when we brought this matter

to the attention of the Florida railroads and asked them to voluntarily correct it. It is also the same inequity against which we filed our complaint with the Florida Railroad Commission on August 24, 1946, and is the situation which led the Florida Commission to deny the carriers any increases on wastewood in Florida in Ex Parte 162 and to deny them the Ex Parte 166 increases on wastewood from points in Florida to Pensacola.

On my Exhibit No. 108 consisting of 21 pages, I have made various comparisons between the rates actually available to us from Florida origins to Pensacola and what those rates would be if made on the basis of the scales available to our competitors on both joint and single line movements, and on interstate and intrastate traffic.

On pages 1, 2 and 3, of my Exhibit No. 108, I have dealt with the comparative situation insofar as the base rates single line hauls are concerned. I have shown the base or June 30, 1946 rates from all stations on the L&N Pensacola-Chattahoochee Line and branches to Pensacola in comparison with what these rates would be if made on several [fol. 1154] of the bases outlined in my Exhibit No. 107 for interstate and intrastate application to Brunswick, Ga. You will note that in many instances, the Georgia scale subject to a minimum of 40,000 lbs., was 5 and 10 cents per ton lower than the rates to Pensacola and that the rates to Brunswick, Ga., on the 60,000 lb. minimum were way below the single line rates available to Pensacola.

On pages 4, 5 and 6, of my Exhibit No. 108, I deal with a comparison of the single line rates to Pensacola with the single line rates available on both inter and intrastate traffic to Brunswick, Ga., but here taking into consideration the effects of both Ex Parte 162 and 166 increases. I call your particular attention to a comparison of column 7 with column 11 on pages 4, 5, and 6. By comparing these columns you can see how the charges we would have to pay to Pensacola on a car of 60,000 lbs., would compare with the charges from Georgia stations to Brunswick, Ga. if the Ex Parte 162 increases should be added to our rates. Please understand this is a comparison between what the charges under our rates would be including Ex Parte 162 with what the Georgia rates are including both Ex Parte

162 and 166. Beginning with Milligan near the bottom of page 4, the charges we would pay on a 60,000 lb. car, if this Commission should require the addition of the Ex Parte 162 increases on the rates on wastewood to Pensacola would become $27.00 per car as compared with $27.16 for a similar haul within Georgia including both Ex Parte 162 and 166 increases. Incidentally, Milligan you will note is 46 miles from Pensacola and we have no, or practically [fol. 1155] no movement from stations under 50 miles. By the time we get 66 miles away from Pensacola at Mossy Head, the first station on page 5, if this Commission requires the addition of the Ex Parte 162 increases to the rates on wastewood to Pensacola, we will be required to pay $33.00 for a car weighing 60,000 lbs. as against a charge of $30.73 from Georgia stations to Brunswick, Ga., including *both* Ex Parte 162 and 166 increases and as compared with a charge of $32.18 on *interstate* traffic from Florida stations to Brunswick, Ga., again both after the Ex Parte 162 and 166 increases have been added.

Page 1 through 6 only contain the story as to single line traffic. *The balance of this Exhibit deals with joint line traffic and as you will see, the disadvantage against Pensacola is even greater in connection with joint line traffic and by far the greatest proportion of our traffic is joint.* On pages 7 through 11, we compare the base rates for joint line hauls to Pensacola with what those rates would be if made on the level of the intrastate and interstate rates to Brunswick, Ga. I call your particular attention to the Apalachicola Northern stations listed at the bottom of page 8 where our rate to Pensacola per net ton of $1.70 compared with rate of $1.40 on basis of the Georgia joint line scale for a 40,000 lb. minimum and with rate of $1.20 from GS&F Georgia stations to Brunswick and from GS&F Florida stations to Brunswick on a minimum of 60,000 lbs.

On pages 12 through 16 I have shown the present rates for joint line hauls from the L&N connecting lines to [fol. 1156] Pensacola, Fla., both as base rates and what those rates will become if this Commission authorizes the addition of Ex Parte 162 or 166 increases to them in comparison with the Georgia joint line maximum scale for the same distances. In considering this showing, please re-

member that this Georgia maximum joint line scale also has application on *interstate* traffic from certain points in Georgia to Jacksonville, Fla. Your particular attention is called to the rates shown opposite the Apalachicola Northern Stations beginning with Fort Gadsden on page 13. You will note that if the Ex Parte 162 increases are added to the present rates to Pensacola, they will become ½ cent higher than the Georgia scale for the same distances even after *both* Ex Parte 162 and 166 increases have been added to it. This is true in a number of instances shown on pages 13 and 14.

Now beginning with page 17, I have shown the charges we are presently required to pay to Pensacola for joint line hauls on cars containing 60,000 lbs., of material as compared with the charges paid by our competitors on both intrastate and interstate traffic. This comparison is made not only for the base rates, but includes comparisons after Ex Parte 162 and 166 have both been added. On page 17 from Bear Creek on the A&StAB you will note our present rate even without the addition of either Ex Parte 162 and 166 increases, results in a charge for a car of 60,000 lbs. of $45.00 as compared with a charge of $43.71 from G&F Georgia stations to Brunswick even after both Ex Parte [fol. 1157] 162 and 166 increases have been added to the latter rates. There are several other instances shown on pages 17 through 21 where the charge we have to pay today on a car of 60,000 lbs. is already higher than the charges available to our competitors for a similar movement even after Ex Parte 162 and 166 *both* have been added to their rates.

Now, I ask that you compare what would happen to our rates if this Commission requires the addition of the Ex Parte 162 increases as compared with both the intra and interstate rates to Brunswick even after both Ex Parte 162 and 166 increases have been added. Your particular attention is called to the Apalachicola Northern stations beginning with Hardaway on page 18 where the addition of the Ex Parte 162 charges to our rates to Pensacola would result in freight charges of $61.50 per car as against $54.00 per car from GS&F Florida stations on interstate traffic to Brunswick, Ga., even after both Ex Parte 162 and

166 increases have been added thereto. I cite this instance only as typical. There are many, many such instances shown on pages 17 through 21.

In my last Exhibit No. 109, which is a one page exhibit, I show just how important the dual basis of rates subject to alternating minimums of 40,000 and 60,000 lbs., is to our competitors. I have simply picked some Georgia stations at random and shown the 40,000 lb. rates in cents per 100 lbs. and the rates per car of 60,000 lbs. together with the charges per car on minimum of 40,000 lbs., and then I have shown the weight break point at which it be-
[fol. 1158] comes cheaper to use the 60,000 lb. rates. You will note that in some instances, it is cheaper to use the 60,000 lb. rates on weight as low as 43,710 lbs., and that the highest weight on which it becomes cheaper to use the 60,000 lb. rates is 54,000 lbs.

(A-58) 6-27-49.

[fols. 1159-1185] PROTESTANT'S EXHIBIT No. 124

Witness: B. H. Overton

Docket No. 30140—Increases in Florida Intrastate Rates
Testimony of B. H. Overton

My testimony will deal primarily with the class rate structure in Florida to a limited extent with the class rates applicable to and from Florida, commodity rates related to class rates within Florida and certain specified commodities.

The class rate structure in Florida is primarily based on the scales prescribed by the Commission in Southern Class Rate Investigation, 100 ICC 513, and supplemental reports thereto. The rate structure similar to the Docket 13494 basis was authorized by the Florida Commission by Order No. 977 in its Docket No. 1000. This rate structure originally provided, for class rates constructed by the addition of arbitraries to the basic scale for the haul south of the line of the Seaboard Air Line Railroad, Jacksonville to River Junction, Florida. The name of the station, River

Junction, Florida, has since been changed to Chattahoochee, Florida. In my further testimony with reference to the arbitraries included in the class rates or where applicable on commodity rates, I will refer to such arbitraries as the "Florida arbitraries" or as "L-2 arbitraries". I will likewise refer to the territory in which the arbitraries apply as "Florida Arbitrary Territory".

The class rates and rates related thereto, generally, contained the full Florida arbitrary until October, 1935 when the carriers voluntarily removed the arbitraries on classes 1 to 7 inclusive, and on column ratings, column 35 and higher. As a result of terms of the increased rate cases, [fol. 1136] the elimination of the arbitraries as to column rates is now effective on column 35R or V, or higher. The Florida arbitraries included in the class rates applicable within and from and to Florida arbitrary territory, when subjected to the various percentage increases, namely, Ex Parte 123, Ex Parte 162 and Ex Parte 166 with their comparable increased cases within Florida, increased the differential or penalty paid by the Florida Peninsula shipper and increased the spread in the level of rates, Florida as compared to the Southeast generally.

Exhibit No. 125 illustrates the relationship of these rates using the eighth class rates for illustrative purposes. The eighth class rate is used because it is the first of the numbered classes, which still contain the Florida arbitrary. Exhibit No. 125 is a statement of eighth class rates in Peninsular Florida and in Southeastern Territory, showing inflation in L-2 arbitrary since June 30, 1946. The increases in Ex Parte 123 likewise affected the Florida arbitrary but as this case involves the changes since June 30, 1946, that date has been used as the basic comparative date. The exhibit shows the rates for various distances applicable on June 30, 1946, the present rates and the rates as proposed by the carriers. Columns 3, 6 and 9, shown as the base rate column, actually is the scale applicable within Southeastern Territory. Columns 11 and 12 of the exhibit, show the amount of increase in the L-2 arbitrary under the present rates and under the rates as proposed by the carriers, showing that the differential paid by the Florida shipper has been increased since June 30, 1946

under the present rates and that the carriers' proposal will generally further increase that differential. For example: for a haul of 100 miles, the differential has been increased 2 cents as shown in column 11 and the carriers' proposal [fol. 1187] will result in an arbitrary 3 cents higher than originally prescribed.

The application of the Florida arbitraries results in substantially greater ton mile earnings to the carriers in Florida than the same carriers earn generally in Southeastern Territory. Exhibit No. 126 is a statement comparing present and proposed ton mile earnings in Peninsular Florida and present ton mile earnings in Southeastern Territory, showing amount earnings in Florida present and proposed, exceed earnings in Southeastern Territory. The ton mile earnings shown are based on the eighth class rates governed by exceptions ratings. Column 8 shows the amount the ton mile earnings from the rates applicable in Peninsular Florida at present exceed the ton mile earnings based on the rates applicable in Southeastern Territory. The earnings in Florida exceed the earnings in Southeastern Territory under the present adjustment by amounts ranging from 3.2 mills at 500 miles to 16 mills at 25 miles. The carriers, in this proceeding, propose to increase the rates so that the earnings in Florida would exceed the earnings in Southeastern Territory by amounts ranging from 4.8 mills at 500 miles to 24 mills at 25 miles.

In this proceeding the carriers have requested the Commission to override the Florida Commission and further increase rates within Florida. The rates within Florida have already been increased sufficiently so that the increase in ton mile earnings in Florida, with rare exceptions, is the same as or greater than the increase in ton mile earnings in Southeastern Territory. Exhibit No. 127 is a comparison of ton mile earnings under rates effective June 30, 1946 with present ton mile earnings, showing increase in Peninsular Florida is greater than between points in Southeastern Territory, except Florida. The ton mile [fol. 1188] earnings are shown for various distances as set out in column 1, from 25 to 500 miles. These distances were not picked but were chosen at random to illustrate

the scales applicable and the same blocks are used in all my exhibits showing scale rates. There are fifteen rate blocks illustrated and as shown by column 10, for only one rate block is the increase in ton mile earnings in Florida under the present adjustment less than the increase in Southeastern Territory, and then only by .1 mill. In nine of the examples, the amount of increase is the same and in five rate blocks, the increase in Florida is greater by amounts ranging from .4 mills to 4 mills.

If the increase in rates requested by the carriers is required by the Commission, the increase in ton mile earnings in Florida since June 30, 1946 will be substantially greater than the increase in ton mile earnings in Southeastern Territory. Exhibit No. 128 is a comparison of ton mile earnings under rates effective June 30, 1946 with proposed ton mile earnings in Peninsular Florida and present ton mile earnings in Southeastern Territory, showing increase in Peninsular Florida should be greater than between points in Southeastern Territory except Florida. The amount of the increase in ton mile earnings in Peninsular Florida, if the carriers' proposed basis became applicable, would exceed the increase in ton mile earnings in Southeastern Territory by amounts ranging from 1.5 mills at 260 miles to 8 mills at 25 and 50 miles, as shown in column 10 of Exhibit No. 126.

The relative level of the rates applicable in Peninsular Florida present and proposed may be illustrated by the miles of transportation purchased for a given rate by the Florida shipper as compared to the shipper in Southeastern Territory. Exhibit No. 129 is a statement of present and proposed eighth class rates governed by exceptions ratings applicable in Peninsular Florida, with miles of [fol. 1189] transportation Florida shipper could purchase under the present scale applicable in Southeastern Territory, showing excess miles of transportation the Florida shipper is and would be required to purchase. Column 6 and 7 of the exhibit show the excess miles of transportation Florida is and would be required to purchase. Column 6 shows that the Florida shipper under the present adjustment is required to pay rates which would purchase from 10 to 120 miles more transportation in Southeastern Terri-

tory. If the carriers' proposal is prescribed, the Florida shipper would be required to pay rates which in Southeastern Territory would purchase from 15 to 160 more miles of transportation.

The relative level of the class rate structure containing the Florida arbitraries, presently applicable in Peninsular Florida, is well illustrated by comparing the rates in Florida and the rates in Southeastern Territory with the Docket 28300 Scale, properly increased. The Docket 28300 Scale is here used only as the fixed factor to compare the level of rates in Florida with the level of rates in Southeastern Territory, so it is not important to consider whether the increases used on this exhibit as applied to the Docket 28300 Scale reflect the future level of that scale or not. The scale is here used as a yard stick and not to show the level of existing rates as compared to the 28300 Scale.

Exhibit No. 130 is a statement of eighth class rates governed by exceptions ratings showing amount Florida spread exceeds Southeastern Territory spread over 30% of the Docket 28300 rate. Columns 5 and 6 of the exhibit show the actual spread in cents per 100 pounds and column 7 shows the amount the spread in Peninsular Florida exceeds the Southeastern Territory spread over the Docket 28300 Scale increased. The present Florida rates as shown by [fol. 1190] column 7 of Exhibit No. 130 are from 2 to 9 cents higher than the difference between the present rates in Southeastern Territory and the Docket 28300 Scale. To more clearly explain the showing of Exhibit No. 130 the actual amounts at 240 miles are as follows: the present rates in Peninsular Florida exceed the Docket 28300 Scale increased by 15 cents as shown in column 5. The present rates in Southeastern Territory exceed the same scale by only 9 cents as shown in column 6, or 6 cents less than the Florida spread over the same scale as shown in column 7.

I have previously explained, very briefly, the general class rate structure within Florida. The removal of the Florida arbitraries on classes 1 to 7 inclusive, resulted in a rather peculiar relationship in the class rates applicable within Florida and in Southeastern Territory. This situation is illustrated by Exhibit No. 131. A number of similar comparisons could have been offered, however, the showing

would only have been cumulative as Exhibit No. 131 illustrates the situation and the differences between other points in Florida are of degree only, depending upon both the total length of haul and the length of haul within Florida arbitrary territory. Exhibit No. 131 shows classes 1 to 12 inclusive, between St. Petersburg, Florida and Jacksonville, Florida compared to rates for similar hauls between points in Southeastern Territory. Rates are shown effective on June 30, 1946, the present rates, and the rates which would result under the carriers' proposal in this proceeding. Exhibit No. 131 shows that on June 30, 1946 classes 1 to 7 on Florida intrastate traffic were on exactly the same level as the rates in Southeastern Territory but that classes 8 to 12 inclusive, between points in Florida, exceeded the rates in Southeastern Territory by amounts ranging from 3 cents on 12th class to 6 cents on 8th class. Under the pres-[fol. 1191]ent adjustment, it is true that on classes 1 to 7 the rates within Florida are less than the rates in Southeastern Territory, however, on classes 8 to 12, the carload classes, the rates in Florida are substantially above the rates in Southeastern Territory. It is my considered opinion that the present adjustment as illustrated by Exhibit No. 131 applicable from, to and within Peninsular Florida, is actually higher and results in greater earnings to the carriers than the rate structure in Southeastern Territory.

The proposed rates require some explanation. The exhibit shows that the proposed basis of rates governed by the classification ratings applicable in Florida, would substantially exceed the rates in Southeastern Territory, whereas, the rates governed by exceptions ratings would be equal to rates in Southeastern Territory on classes 1 to 7 inclusive, and be substantially above Southeastern Territory on classes 8 to 12 inclusive.

On interstate traffic, subsequent to the increases authorized in Ex Parte 162 and prior to the application of the increases authorized in Ex Parte 166, the Supreme Court sustained the Commission's interim order in Class Rate Investigation, 1939, 262 ICC 447. By subsequent orders the interim order in that proceeding was made effective in Southeastern Territory on interstate traffic by reducing the class rates 10% and increasing that basis 22½%. On

Florida intrastate traffic, the cariers declined to treat the class rates, classes 1 to 7 inclusive in Peninsular Florida to reflect the 28300 adjustment but only applied the interstate order in Peninsular Florida on intrastate rates which included the Florida arbitrary. The Florida Commission as to class rates and all rates related to class rates, had al-[fol. 1192] ready granted the full increase requested in the state case comparable to Ex Parte 162. The Florida Commission's order in Docket No. 1574, the companion case to Ex Parte 166, and the order here actually protested, as to class rates and rates related to class rates, corrected that situation by specific prescription of the class rates treated to reflect the Docket 28300 readjustment. If the carriers had received the full amount of the increase requested in Florida Commission Docket No. 1574, or do receive by order of this Commission the rates requested in this proceeding, the result will be rates as shown on Exhibit No. 131, under the heading "Proposed Rates". A comparison of the relative rates effective June 30, 1946 with the proposed rates will show that the carriers are actually proposing on classes 1 to 7 inclusive, governed by classification ratings, to increase the rates in Florida a substantially greater percentage than the rates have been increased in Southeastern Territory. For example: a first class rate of 121 cents would be increased in Florida to 181 cents, whereas, in Southeastern Territory the same rate has been increased only to 168 cents. This matter was presented in considerable detail to the Florida Commission during its hearings on Docket No. 1574 and definitely is the reason for the specific provisions in the Florida Commission's orders relating to class rates governed by classification ratings. As a matter of actual history, the railroads actually did increase rates in Florida governed by classification ratings, a greater amount subsequent to June 30, 1946 than the carriers had increased rates in Southeastern Territory effective on August 22, 1947, until the changes authorized in Florida Commission Docket No. 1574.

The class rate structure in Florida, as compared to interstate rates from points outside of Florida, has reflected various differences for similar hauls. It is true that the [fol. 1193] present orders of the Florida Commission au-

thorized some rates and it is important to reiterate that because of the adjustment on classes 8 to 12, such condition is always limited to some rates in Peninsular Florida less than for similar hauls from outside points to Florida destinations. This condition is nothing new and, as a matter of fact, was first brought about in Florida by voluntary action of the rail carriers. Exhibits No 132 to No. 138 inclusive, show the relationship of the Florida intrastate rates and the rates applicable from outstate points, effective from June 1, 1929 to the present time and the carriers' proposed rates in Florida. The exhibits do not show all of the changes during the period covered as, in each instance, I have disregarded the time lag when such a time lag existed between the time when increases became applicable on interstate traffic and the time when the comparable increase became applicable on intrastate traffic. I have also disregarded the temporary application of increases under Ex Parte 148 and the interim increases under Ex Parte 148, 162, 166.

Exhibits No. 132 to No. 134 inclusive, show rates to Florida destinations comparing the rate from a Florida point with the contemporaneous rate applicable from an equidistant point outside the state of Florida both of which rates contain, exactly the same Florida arbitrary. Exhibit No. 132 shows classes 1 to 7 inclusive from Thomasville, Georgia and Tallahassee, Florida to St. Petersburg, Florida effective June 1, 1929 to the present time and also the carriers' proposed basis. As shown on page 2 of the exhibit, to St. Petersburg from Thomasville, Georgia the actual distance is 282 miles and the rate making distance, 300 miles. From Tallahassee, Florida the actual distance is 281 miles and the rate making distance, 300 miles. The rates effective on June 1, 1929, reflected the rates prescribed [fol. 1194] in Southern Class Rate Investigation, from Thomasville, Georgia and the rates prescribed by the Florida Commission in Docket No. 1000 from Tallahassee, Florida. The exhibit shows in the first block of rates shown, that the rates from Thomasville, Georgia and Tallahassee, Florida were on exactly the same level. Effective on October 18, 1935, as shown in the second block of rates

on the exhibit, the rate from Tallahassee was readjusted and reflects a spread under the Thomasville, Georgia rate to the same destination ranging from 6 cents to 18 cents. The changed relationship, intrastate, versus interstate traffic, was the result of voluntary action on the part of the railroads. The same differential in favor of intrastate traffic differing only in amount resulting from the horizontal increases in rates continued until August 22, 1947, when the interstate rates were readjusted under the Docket 28300 interim order. Effective on August 22, 1947, the first class rate governed by exceptions ratings applicable on Florida intrastate traffic continued to reflect a 24 cent spread under the interstate rate. However, the different treatment under Docket 28300 accorded Florida as compared to interstate commerce, reduced the spread on rates governed by classification ratings to 9 cents. The present rates which became effective on December 7, 1948, continue to reflect a differential in favor of Florida intrastate traffic but as such differential has existed without protest since October 1935, it seems absurd to consider that now any discrimination present is undue, whereas, for the previous thirteen years it has not been unlawful. The carriers' proposal would continue a first class differential on Florida traffic on rates governed by exceptions ratings but reduce the differential to 12 cents on rates governed by classification ratings. The carriers voluntarily provided an 18 cent [fol. 1195] differential and continued the differential at that level or higher until August 22, 1947.

Exhibit No. 133 is a companion exhibit to Exhibit No. 132 showing the first seven classes from Valdosta, Georgia and Fernandina, Florida to Tampa, Florida, effective on June 1, 1929 to date and the carriers' proposed basis. The rate making distance as shown on page 2 of the exhibit is 240 miles from both origins and as shown by the rates effective June 1, 1929, both rates originally contained the same Florida arbitrary. Exhibit No. 133 shows that effective on October 18, 1935, the intrastate adjustment reflected a substantial spread under the interstate adjustment and that the present rates likewise reflect such a spread. The present rates are the rates which became effective December 7, 1948. The carriers' proposal would

reduce the spread, Florida intrastate rates under interstate rates into Florida, on rates governed by classification ratings, to differentials materially less than the differential effective in 1935 and all subsequent dates up to August 22, 1947.

Exhibit No. 134 is a companion exhibit to Exhibit Nos. 132 and 133, showing the rates on classes 1 to 7 inclusive, from Bainbridge, Georgia and Chattahoochee, Florida to Miami, Florida for a rate making distance of 520 miles. The rates from both origins were on the same level on June 1, 1929 and both contain the same Florida arbitrary. Effective in 1935, the intrastate rates were made less than the interstate rates. A differential exists under the present rates, however, here again the carriers' proposal would reduce the differential on rates governed by the classification ratings to materially less than the differential voluntarily established in October 1935 and continued until August 22, 1947.

[fol. 1196] Exhibit Nos. 135 to 138 inclusive, compare the rates, classes 1 to 7 inclusive, between Florida points with rates for the same rate making distance from outstate points to the same destinations in Florida. The rates are shown in each instance effective June 1, 1929 to the present time and including the carriers' proposal.

Exhibit No. 135 shows classes 1 to 7 from Helena, Georgia and Tampa, Florida to St. Augustine, Florida, a rate making distance of 210 miles. As shown by the first block of rates on the exhibit, the rates from Helena, Georgia to St. Augustine, Florida effective on June 1, 1929 and until October 18, 1935, were less than the rates from Tampa, Florida to the same destination by amounts ranging from 8 cents on first class to 3 cents on seventh class. Effective October 18, 1935, by voluntary action, this advantage to the interstate shipper was exactly reversed, the rates from Tampa, Florida to St. Augustine, Florida becoming less than the rates from Helena, Georgia to the same destination, by amounts ranging from 8 cents on first class to 3 cents on seventh class. That advantage in rate level continued for the Florida shipper until August 22, 1947 when the rates governed by classification ratings from Helena, Georgia were reduced sufficiently to provide rates

the same as or 1 cent less than the rates from Tampa, Florida. The rates governed by exceptions ratings continued the same differential in favor of Tampa as had become effective on April 30, 1947. The readjustment authorized by the Florida Commission effective December 7, 1948 in its Docket No. 1574, the proceeding under attack here, restored a differential in favor of the Florida shipper, a condition which had existed since 1935 and without attack. The carriers' proposal would again provide rates from Tampa, Florida governed by classification ratings the same as, or 1 cent higher than the rates from Helena, Georgia. As to rates governed by the exceptions ratings, [fol. 1197] the whole matter in issue here as to discrimination against the Georgia shipper, is a matter of whether the first class rate from Tampa shall be 14 cents or 20.6 cents less than the rate from Georgia. On fifth class the change in differential is only 2.8 cents, on sixth class 3 cents and on seventh class 2.4 cents.

Exhibit No. 136 is a companion exhibit to Exhibit No. 135 showing the rates from Claxton, Georgia and Fort Lauderdale, Florida to Dunnellon, Florida for a rate making distance of 300 miles. The advantage to the Georgia shipper of 6 cents on first class effective in June of 1929, was converted to a disadvantage of 12 cents on October 18, 1935. The carriers' proposal would practically equalize the Florida rate and the interstate rate on rates governed by classification ratings and provide a differential in favor of the Florida shipper of 19 cents on rates governed by exception ratings. The relationship actually involved as to the rates shown on Exhibit No. 136 is whether the first class differential favoring the Florida shipper should be 19 cents or 26.8 cents. If the rates governed by classification ratings in Florida were treated under the carriers' proposal the same under Ex Parte 162 and Docket 28300 as were the interstate rates, the relative differentials would be about approximately the same as on the rates governed by exception ratings.

Exhibit No. 137 is a companion exhibit to Exhibit No. 135 and No. 136 showing the rates from Charleston, S. C. and Miami, Florida to Oscala, Florida, for a rate making distance of 320 miles. The removal of the Florida arbi-

traries on Florida intrastate traffic effective October 1935, as shown in the first two blocks of rates shown on Exhibit No. 137, converted a disadvantage of the Florida shipper of 8 cents on first class to an advantage of 12 cents. The [fol. 1198] affect of the carriers' proposal as to the amount of increase proposed on Florida intrastate traffic, as compared to interstate traffic on rates governed by classification ratings, may be computed from the rates shown effective November 16, 1939 as compared to the carriers' proposed basis of rates. The rate from Charleston, S. C. of 152 cents effective November 16, 1939 and until June 30, 1946 has been increased to 210 cents, as shown under the carriers' proposed basis, an increase of slightly over 38 per cent. The carriers propose in this proceeding, however, to increase the comparable rate from Miami from 139 cents to 209 cents, an increase of slightly over 50 per cent, or 12 per cent more than the increase on interstate traffic. Computations from the rates shown on Exhibit No. 135 and No. 136 will show similar greater increases proposed on Florida intrastate traffic than on interstate traffic. As to the rates shown on Exhibit No. 137 governed by exception ratings, the whole matter in issue is whether the differential on Florida traffic on first class should be 19 cents or 27.6 cents. Considering that on October 18, 1935 there was a total change in relationship of 20 cents on the first class rates, an 8 cent disadvantage converted to a 12 cent advantage on a rate level which has since been increased 50 per cent that an 8.6 cent reduction in differential loses its importance.

Exhibit No. 138 is a companion exhibit to Exhibits No. 135, No. 136 and No. 137 which shows the rates on classes 1 to 7 inclusive from Atlanta, Georgia and Miami, Florida to Gainesville, Florida for a rate making distance of 360 miles. The relationship between the rates on Florida intrastate traffic and on interstate traffic for the same rate making distance of 360 miles. The relationship between the rates on Florida intrastate traffic and on interstate traffic for the same rate making distance are similar to the [fol. 1199] relationships shown on Exhibit No. 135, No. 136 and No. 137.

As referred to in my previous testimony, the rate level

in Peninsular Florida on class and column rates below column 35R or V is at present higher on Florida intrastate traffic than on interstate traffic for similar hauls. Exhibit No. 139 illustrates this situation showing classes 8 to 12 inclusive, governed by classification ratings to Florida destinations comparing rates from Florida origins with rates from interstate origins for equidistant hauls showing the higher level of Florida intrastate rates. The actual distances shown on the exhibit vary slightly, however, in each instance they reflect the same rate making block. The first block of rates shown illustrates the entire exhibit showing the rates from Tampa, Florida and Savannah, Georgia to Lawtey, Florida for a rate making distance, in each instance, of 170 miles. The rates from Tampa, Florida exceed the rates from Savannah, Georgia by the following amounts: eighth class, 1.8 cents; ninth class, .6 cents; tenth class, .8 cents; eleventh class, .2 cents; twelfth class, .6 cents. The exhibit is designed to show the actual situation and, in a few instances, the interstate rate is slightly above the intrastate rate, for example: to Dunnellon, Florida. However, as shown by the exhibit, the general situation is that rates in Florida are now higher than the comparable interstate rate. As illustrated by the rates shown to Tallahassee, Florida the third block of rates on Exhibit No. 139 to points in northern Florida from points in Peninsular Florida the difference is substantial.

Exhibit No. 140 is a companion exhibit to Exhibit No. 139 showing the rates governed by exception ratings between the same points as shown on Exhibit No. 139. The rates on Florida intrastate traffic as shown by the exhibit, with [fol. 1290] few exceptions, exceed the rates on interstate traffic for similar hauls and, generally, the rates in Florida at present are higher than the interstate rates.

Exhibit Nos. 139 and 140 show the general situation as to relative level of class rates governed by classification ratings or by exception ratings, and also show the relative level of rates made with relation to the class rate structure on all rates, column 35R or V or lower. Exhibit No. 141 shows this relative situation as applied to a specific commodity, to illustrate the *affect* on specific rates. A large number of such exhibits could have been prepared, the

Exceptions Tariff listing some 511 items, itemizing one or more commodities in each item, providing exception ratings lower than column 35R or V. In addition, of course, there are a large number of classification ratings, eighth class and lower. The showing of rates on a large number of specific commodities would have merely been culmative as the illustrations appearing in Exhibit No. 139 and No. 140 show the actual situation. Ex- No. 141 merely applies the relative situation as shown in Exhibit No. 139 and No. 140 to a specific commodity to demonstrate its application.

Exhibit No. 141 is a statement of carload rates on Cereal Food Preparations to destinations in Florida from origins in Florida compared to rates from interstate origins showing the level of rates on Florida intrastate traffic is higher than the interstate level. The exhibit shows both the present rates and the proposed rates in this proceeding. The showing of the exhibit may be illustrated by the rates to Gainesville, Florida, the next to the last destination shown on the exhibit. The rate from Miami, Florida to Gainesville, Florida at present is 73.2 cents, whereas, the rate from Atlanta, Georgia for the same rate making distance is only 70 cents, 3.2 cents less than the rate from [fol. 1201] Miami, for the same rate making distance, 260 miles. The carriers proposed basis of rates to Florida would increase the Miami rate to 76 cents, providing a differential against the Florida shipper of 6 cents per 100 pounds. To all the destinations shown on the exhibit, the rates from the Florida origins are at present the same as the rate from the interstate origin for the same rate making distance to one destination, and higher by amounts ranging from .6 cents to 5.4 cents in the other seven examples. The carriers' proposal would establish a differential against the Florida shipper of from 3 to 9 cents.

The decision of the Florida Commission in its Docket No. 4574 authorized generally, an emergency charge of 20 per cent but adopted the maximum increases prescribed by the Interstate Commerce Commission in Ex Parte 166. The affect of the adoption of these maxima when applied to the carload rates on cement moving in competition with the interstate shipper is that, generally on such competitive

movements, there would be no change on the Florida intrastate rate and the relationship now existing would continue. At the present time, cement is actually produced in Florida only at Tampa, Florida. Exhibit No. 142 is a statement of rates on cement, carloads, from Tampa, Florida and outstate producing points to destinations in Florida showing relationship of present and proposed rates from Tampa with rates to same destinations for equidistant hauls in interstate commerce. There are slight variations shown in the distance, however, in each instance the rates fall in the same rate block in the cement scale. There are five destinations shown comparing rates from Tampa, Florida with rates from Clinchfield, Georgia, Mobile, Alabama, and Birmingham, Alabama to equidistant points in Florida. To four of the destinations shown, the present equality of rates would continue under the carriers' proposal and to the fifth destination, Port St. Joe, Florida, the 1 cent advantage [fol. 1202] of the Birmingham shipper under the present adjustment would likewise continue under the proposed adjustment.

The level of rates on cement, carload, in Peninsular Florida is higher under the present adjustment than the level of rates on cement, carload, moving between points in Southeastern Territory in interstate commerce. Exhibit No. 143 illustates this situation. Exhibit No. 143 is a comparison of carload rates on cement from Tampa, Florida to Florida destinations with rates for similar hauls from Birmingham, Alabama and Mobile, Alabama, to destinations in Southeastern Territory. The differential against the Florida intrastate adjustment, both present and proposed, as shown and in every instance for the same rate making distance, the rate on Florida intrastate traffic is the same as or higher than the interstate rate; the differential against the Florida rates ranging from .8 cents to 4 cents per 100 pounds. The carriers' proposal would increase that difference on the shorter hauls and make no change in the rates on the longer hauls.

The carload rates on common brick from outstate origins to Florida destinations are the same as or generally lower than the present Florida intrastate rates. Exhibit No. 144 shows rates on common brick, carload, from Augusta,

Georgia to destinations in Florida compared with rates on Florida intrastate traffic for similar hauls showing spread Florida over interstate rates. Exhibit No. 144 shows the rates to nine destinations and as shown by column 6 the Florida intrastate adjustment, at present, is ½ cent less than the interstate adjustment to one destination, is the same as the interstate rate to two destinations, is ½ cent higher than the interstate rate to four destinations and 1 cent higher than the interstate rate to two destinations. The carriers' proposal would not change this rela- [fol. 1203] tionship to any of the destinations shown.

On interstate traffic including rates from outstate points to Florida, the carriers have made certain readjustments in the Ex Parte 162 and 166 increases on common brick, carload, resulting in a lesser increase than has actually been applied under the present rates on Florida intrastate traffic. Exhibit No. 145 illustrates this situation. It is a statement of carload rates on common brick effective June 30, 1946 and at the present time to Florida destinations from Augusta, Georgia and under the Florida intrastate scale showing amount of increase under Ex Parte 162 and 166 compared to increase authorized and effective in Florida. The amount of increase since June 30, 1946 in the rate from Augusta, Georgia is shown in column 7 and the amount of increase in the Florida rate for the same distance is shown in column 8. There are ten destinations shown on the exhibit. To one destination the increase from Augusta, Georgia is 3 cents as compared to an increase in Florida of 4½ cents. To eight destinations the increase from Augusta, Georgia is 3½ cents as compared to an increase in Florida of 4½ cents. To the other destination the increase from Augusta, Georgia is 4 cents as compared to 4½ cents in Florida.

The scale of rates applicable on brick, except common brick in Florida, is on a higher level in the scale applicable in Southeastern Territory. This situation is shown in Exhibit No. 146. It shows the scale rates applicable on brick, carload, except common brick between points in Southeastern Territory compared with scale applicable in Peninsular Florida, showing level of rates in Florida is higher than in Southeastern Territory. In Southeastern

Territory there is a special scale applicable on clay brick and articles as described in Item 3395 of C. A. Spaninger [fol. 1204] Agent, Tariff I. C. C. No. 1044, therefore, up to 340 miles, two scales are shown as applicable in Southeastern Territory. Columns 5 and 6 show the spread, the Florida scale over the Southeastern Territory scales on brick and clay brick. As shown in column 5, the Florida scale exceeds the Southeastern Territory scale by amounts ranging from .3 cents to 2 cents for the distances shown except at 50 miles where the Florida scale is ½ cent less than the Southeastern Territory scale. On clay brick the Florida scale exceeds the Southeastern Territory scale by amounts ranging from 1.2 cents to 3.1 cents.

The carriers are here demanding the application of the same increases percentagewise applied to the Florida intrastate structure as has been authorized for application on interstate commerce including, traffic moving on class rates and rates related to the class rates from and to the State of Florida. Representing the Florida shippers we endeavored unsuccessfully in both Ex Parte 162 and Ex Parte 166 proceedings to have the Commission consider specifically the rate structure from and to Florida and the *affect* on the Florida shipper of the carriers' proposals in those two proceedings. We offered very voluminous evidence in Ex Parte 166 with particular relation to the class rate structure, Montgomery Exhibit No. 3 and No. 4. Montgomery Exhibit No. 3 is the exhibit proper and Montgomery Exhibit No. 4 is a narrative explanatory statement of the exhibit. We are here offering very limited testimony on the *affect* of these increases in the interstate rate structure to show the error of the increases applied on that rate structure and to demonstrate that it would be an erroneous action to compound that error by requiring the same increases be applied within the state. Exhibit Nos. 147 to 152 inclusive, deal with the situation just referred to. The exhibits illustrate the condition by showing rates between St. Petersburg, Florida and various [fol. 1205] points in Southeastern Territory. Exhibit Montgomery No. 3 in Ex Parte 166 made a similar showing, however, in addition to St. Petersburg as a Florida point, rates were shown from and to Miami, Orlando and

Tampa, and in addition between those four points and points in Trunk Line, New England and C. F. A. and I. F. A. Territory. The comparative situation shown on Exhibits 147 to 152 inclusive, from and to St. Petersburg, Florida, from and to Southeastern Territory, illustrate the situation from and to other points in Peninsular Florida and also the situation from and to other rate territories.

Exhibit No. 147 is a statement of first class rates governed by exceptions ratings between St. Petersburg, Florida and representative points in Southeastern Territory, showing the inflation in the L-2 arbitrary. The exhibit shows rates from and to eleven points in Southeastern Territory. Column 2 shows the through distance. Column 3 shows the distance in Florida territory that is, the distance for which the Florida arbitrary is applied. Column 4 shows the thru first class rate originally prescribed in Southern Class Rate Investigation, Docket 13494. Columns 5 and 6 show how that thru rate was constructed, column 5 showing the base rate which actually is the Appendix K-2 scale as described at the bottom of the exhibit and column 6 the amount of the Florida arbitrary. Columns 7, 8 and 9 show the present rates, showing the thru rate, the base rate and the L-2 arbitrary. Column 10 shows the amount of increase in the L-2 arbitrary over the arbitrary which was originally prescribed. For example, to the first point shown on the exhibit, Atlanta, Georgia, the arbitrary originally prescribed as shown in column 6 was 16 cents. The arbitrary contained in the present rate is 27 cents, an increase in the arbitrary alone of 11 cents as shown in column 10. The average increase in the arbitrary to the eleven points shown, as shown at the bottom of col-
[fol. 1206] umn 10, is 11 cents.

Exhibit No. 148 is a statement comparing the present ton mile earnings in Florida arbitrary territory and Southeastern Territory except Florida, showing amount earnings in Florida exceed earnings in Southeastern Territory. The ton mile earnings are shown in columns 7, 8 and 9. The earnings between Atlanta, Georgia and St. Petersburg, Florida illustrate the exhibit. Column 7 shows that the first class rates produce ton mile earnings in Florida arbitrary territory of 130.8 mills, whereas, the earnings in

Southeastern Territory are only 104.5 mills, as shown in column 8, 26.3 mills less than the earnings in Florida arbitrary territory as shown in column 9. The present rates between St. Petersburg, Florida and the eleven points in Southeastern Territory as shown on the exhibit, produce an average of 24.3 mills greater ton mile earnings in Florida arbitrary territory than in Southeastern Territory as shown at the bottom of column 9.

Exhibit No. 149 is a comparison of the ton mile earnings originally prescribed with present ton mile earnings showing increase in Florida is greater than between points in Southeastern Territory except Florida. The present ton mile earnings shown in columns 7 and 8 are taken from Exhibit No. 148. Columns 11 and 12 show the increase over the prescribed ton mile earnings in Florida arbitrary territory and in Southeastern Territory. Column 13 shows the amount the increase in Florida arbitrary territory exceeds the increase in Southeastern Territory. The rates between Atlanta, Georgia and St. Petersburg, Florida, and the earnings and increase in earnings, illustrate the showing of the exhibit. The rates applicable at present produce ton mile earnings in Florida arbitrary territory 51.8 mills higher than the ton mile earnings produced by the rates prescribed in Docket 13494 as shown in column 11. The [fol. 1207] increase in earnings in Southeastern Territory, however, is only 41.1 mills as shown in column 12. The present rates provide ton mile earnings in Florida arbitrary territory which have been increased 10.7 mills more than the increase in Southeastern Territory since these rates were prescribed in Docket 13494, as shown in column 13. To the eleven points shown, the increase in ton mile earnings in Florida arbitrary territory exceeds the increase in Southeastern Territory by an average of 9.6 mills as shown at the bottom of column 13.

The relative level of rates from and to Florida is also shown by a comparison of the miles of transportation, the Florida shipper could purchase if his rates were equal to the rates in Southeastern Territory generally. Exhibit No. 150 is a statement of first class rates governed by exceptions ratings and rate making distances between St. Petersburg, Florida and representative points in South-

eastern Territory, with miles of transportation Florida shipper would purchase under the present K-2 scale, showing the excess miles of transportation the Florida shipper is required to purchase. Column 2 shows the present first class rates between the Southeastern points shown in column 1 and St. Petersburg, Florida. Column 3 shows the rate making distances for those rates. Column 4 shows the miles of transportation the rate in column 2 would purchase under the present K-2 scale. Column 5 shows the excess miles of transportation the Florida shipper is required to buy under the present interstate rate adjustment. Column 5 shows that the Florida shipper is required to buy from 100 to 150 miles of transportation more than he would receive under the present K-2 scale application in Southeastern Territory. The average excess transportation the Florida shipper is now paying for is 124 miles as shown at the bottom of column 5.

[fol. 1208] The Commission in Class Rate Investigation, 1939, 262 ICC 447, prescribed a scale of class rates between all points east of the Rocky Mountains including, Peninsular Florida for application in conjunction with a uniform classification to be compiled. The readjustment of rates during this interim period should bring differential territorial rates closer to the basic scales in a given territory. The substantial increases authorized since 1946 without consideration of the differential territories such as, Peninsular Florida, have however, substantially widened that differential. The relative level of rates from and to Florida may be illustrated by a comparison of the rates from and to Florida and the rates in Southeastern Territory for similar hauls with an independent rate scale. Exhibit No. 151 makes this comparison using the Docket 28300 Scale increased 22½% and 25%. Exhibit No. 151 is a statement showing the amount the Florida spread exceeds the Southeastern Territory spread over the Docket 28300 rate. Column 3 shows the present first class rate between St. Petersburg, Florida and the points shown in column 1. Column 4 shows the contemporaneously applicable rate for similar hauls in Southeastern Territory. Column 5 shows the rate for similar hauls under the Docket 28300 Scale increased 22½% and 25%. Column 6 shows the spread of the Florida

rate over the Docket 28300 rate. Column 7 shows the spread of the Southeastern Territory rate over the Docket 28300 rate. Column 8 shows the amount the Florida spread over the Docket 28300 rate exceeds the Southeastern Territory spread over the Docket 28300 rate. To eleven destinations shown, the Florida spread exceeds the Southeastern Territory spread by an average of 27.9 cents, as shown at the bottom of column 8.

Exhibit No. 152 shows the relationship of rates from and to Florida with the rates in Southeastern Territory expressed in miles of transportation each rate would purchase [fol. 1209] under the Docket 28300 Scale increased 22½% and 25%. The exhibit shows the penalty against the Florida shipper expressed excess miles of transportation the Florida shipper is required to purchase. The rates from and to Atlanta, Georgia, the first rate shown, with a rate making distance of 520 miles, the present first class rate as shown in column 3, would purchase 825 miles of transportation under the Docket 28300 Scale increased as shown in column 4, whereas, the rate in Southeastern Territory for the same 520 mile rate making distance, as shown in column 5, would purchase only 700 miles of transportation under the Docket 28300 Scale increased as shown in column 6, 125 miles less than now paid for by the Florida shipper, as shown in column 7. The penalty against the Florida shipper as compared to the Southeastern Territory shipper, related to the Docket 28300 Scale increased, between St. Petersburg, Florida and the eleven Southeastern Territory points shown on the exhibit, would average 133.6 miles of transportation.

(Here follows 1 Paster, side folio 1210)

[fol. 1210]

RESPONDENT'S EXHIBIT No. 170

Florida East Coast Railway Company
Scott M. Loftin and John W. Martin, Trustees

Analysis of Net Railway Operating Income by Services

Year	Freight Service					Passenger Service				
	Revenues	Expenses	Net Revenues	Net Rwy. Operating Income	Ratio Exp. to Revenues	Revenues	Expenses	Net Revenues	Net Rwy. Operating Income	Ratio Exp. to Revenues
1936	$ 5,388,676	$ 3,432,291	$1,956,385	$1,164,368	64	$ 3,225,832	$ 3,083,563	$ 142,269	$ 286,572D	96
1937	5,545,159	3,495,842	2,049,317	1,166,203	63	3,758,047	3,627,461	130,586	424,625D	97
1938	6,201,524	3,627,231	2,574,293	1,558,734	58	3,392,867	3,375,368	17,499	529,242D	99
1939	5,921,301	3,540,316	2,380,985	1,546,165	60	3,340,066	3,593,229	253,162D	802,466D	108
1940	6,540,283	3,808,646	2,731,637	1,874,223	58	4,208,555	4,533,037	324,482D	889,004D	108
Average Year 1936–1940	5,919,389	3,580,865	2,338,523	1,461,939	60	3,585,073	3,642,532	57,458D	586,382D	102
1941	6,580,535	4,015,671	2,563,864	1,813,801	61	4,918,586	4,636,342	282,244	233,274D	94
1942	12,222,558	5,583,960	6,638,598	5,495,343	46	8,615,528	5,897,247	2,718,281	2,378,616	68
1943	17,218,535	8,265,862	8,952,673	5,624,625	48	15,340,550	8,339,011	7,001,539	4,548,854	54
1944	16,088,094	9,404,402	6,683,692	2,867,525	58	15,642,108	9,651,409	5,990,699	3,084,074	62
1945	14,424,894	9,782,521	4,642,373	1,934,065	68	15,146,113	10,792,416	4,353,697	2,467,663	71
Average Year 1941–1945	13,306,923	7,410,683	5,896,240	3,547,072	56	11,932,577	7,863,285	4,069,292	2,449,186	66
1946	16,329,493	11,223,025	5,106,468	3,771,197	69	10,213,995	9,498,796	715,199	520,240	93
1947	17,099,229	12,726,228	4,373,001	3,572,614	74	9,955,105	10,957,056	1,001,951D	2,028,333D	110
1948	18,980,402	12,261,657	6,718,745	4,685,133	65	9,672,797	11,636,152	1,963,355D	2,930,081D	120

D—Denotes Deficit.

Source: Annual Reports on file with the Interstate Commerce Commission.

[fols. 1211-1213] [File endorsement omitted]

IN SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1951, No. 444

[Title omitted]

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION OF PARTS OF RECORD TO BE PRINTED—Filed December 20, 1951

Statement of Points

Appellants adopt for their statement of points upon which they intend to rely in their appeal to this Court the points contained in their assignment of errors heretofore filed.

Designation of Record

Appellants designate the entire record as filed in the above entitled case for printing by the Clerk of this Court.

Lewis W. Petteway, Counsel for Appellants, 700 South Adams Street, Tallahassee, Florida.

[fol. 1214] [File endorsement omitted]

IN SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1951, No. 444

[Title omitted]

AMENDED DESIGNATION OF PARTS OF RECORD TO BE PRINTED—Filed February 4, 1952

Appellants designate the following portions of the record herein for printing by the Clerk of this Court:

1. Complaint of Florida Railroad and Public Utilities Commission.

2. Answer of the United States of America.

3. Answer of the Interstate Commerce Commission.

4. Answer of Atlantic Coast Line Railroad Company and other railroads operating in Florida.

5. Order designating Judges to compose Three-Judge Court.

6. Transcript of final hearing on May 1, 1951 before the Three-Judge Court, including the following portions of the proceeding before the Interstate Commerce Commission in ICC Docket No. 30140 which were received in evidence by said Three-Judge Court:

a. Petition on behalf of railroad companies dated December 3, 1948.

[fol. 1215] b. Order of investigation dated January 5, 1949.

c. Transcript of stenographer's notes of the hearing held by the Interstate Commerce Commission on June 28, 29, and July 1 and 2, 1949.

d. Exhibits 1, 2, 3, 4, 11, 13, 27, 28, 29, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 98, 103, 106, 124, and 170, received in evidence by the Interstate Commerce Commission in said Docket No. 30140.

e. Report of Interstate Commerce Commission dated May 4, 1950.

f. Petition for rehearing filed by the Florida Railroad and Public Utilities Commission—June 19, 1950 (appearing on page 178 of certified record).

g. Order of Interstate Commerce Commission denying petition for rehearing dated July 25, 1950.

h. Final Order of Interstate Commerce Commission dated July 25, 1950.

i. Reply of Respondent railroads filed June 27, 1950, appearing on page 579 of certified record.

j. Petition of Respondents for modification of Order filed September 8, 1950.

k. Order of Interstate Commerce Commission entered September 18, 1950.

7. Opinion delivered by Three-Judge Court.

8. Final Judgment of Three-Judge Court.

9. Petition for Appeal.

10. Assignment of Errors and Prayer for Reversal.

11. Order Allowing Appeal.

12. Citation on Appeal.

13. Supplemental Citation on Appeal.

14. Motion to have certain original records transmitted to the Clerk of the Supreme Court.

15. Order that certain original records be forwarded to the Clerk of the Supreme Court.

[fols. 1216-1217] 16. Motion for Extension of Time for Docketing and Filing Record.

17. Order Extending Time for Docketing and Filing Record.

18. Original Praecipe.

19. Supplemental Praecipe.

20. Appellants' Statement of Points to be Relied Upon.

21. Appellants' Amended Designation of Parts of Record to be printed.

Appellants' stipulate that the parts of the record not printed shall have the same force and effect and may be treated for all purposes as if they were a part of the printed transcript of record.

Lewis W. Petteway, Counsel for Appellants, 700 South Adams Street, Tallahassee, Florida.

The foregoing designation and stipulation have been received and are approved this 1st day of February, 1952.

Philip B. Pearlman, The Solicitor General of the United States, By —— ——, Department of Justice, Washington, D. C.

The foregoing designation and stipulation have been received and are approved this 4th day of February, 1952.

Allen Crenshaw, Assistant Chief Counsel, Interstate Commerce Commission, Washington, D. C.

The foregoing designation and stipulation have been received and are approved this 4th day of February, 1952.

Frank W. Gwathmey, Attorney for Intervening Railroads, 1110 Shoreham Building, Washington, D. C.

[fol. 1218] SUPREME COURT OF THE UNITED STATES

No. 444, October Term, 1951

[Title omitted]

ORDER NOTING PROBABLE JURISDICTION—January 2, 1952

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

(1639)

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 744

WILBUR C. KING, JERRY W. CARTER AND RICHARD A. MACK, AS AND CONSTITUTING THE FLORIDA RAILROAD AND PUBLIC UTILITIES COMMISSION,

Appellants,

vs.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF FLORIDA

STATEMENT AS TO JURISDICTION

LEWIS W. PETTEWAY,
Counsel for Appellants.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 444

WILBUR C. KING, JERRY W. CARTER AND RICHARD A. MACK, AS AND CONSTITUTING THE FLORIDA RAILROAD AND PUBLIC UTILITIES COMMISSION,

Appellants,

vs.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF FLORIDA

STATEMENT AS TO JURISDICTION

In compliance with Rule 12 of the Rules of the Supreme Court of the United States, as amended, Plaintiffs submit herewith their statement particularly disclosing the basis upon which the Supreme Court has jurisdiction on appeal to review the judgment of the District Court entered in this cause.

Opinion Below

The opinion of the District Court for the Northern District of Florida, Tallahassee Division, is unreported as of this date. A copy of the opinion, findings of fact, conclusions of law and judgment is attached hereto as Appendix A.

Jurisdiction

The judgment of the District Court was entered on July 17, 1951. A petition for appeal is presented to the District Court herewith, to-wit: on September 7, 1951. The jurisdiction of the Supreme Court to review this decision by direct appeal is conferred by Title 28, United States Code, Sections 1253 and 2101(b). The following decisions sustain the jurisdiction of the Supreme Court to review the judgment on direct appeal in this case: *Knott* v. *Chicago, B & Q R Co.*, 230 U. S. 474, 47 L. Ed. 1571; *Florida* v. *U. S.*, 282 U. S. 194, 75 L. Ed. 291, and *North Carolina* v. *United States*, 325 U. S. 507, 89 L. Ed. 1760.

Questions Presented

1. Does the Interstate Commerce Commission have authority to require railroads to increase their intrastate freight rates generally to enable said carriers to meet deficits incurred from their passenger operations?

2. Can intrastate shippers and receivers of freight be required lawfully by common carrier railroads to pay excessive and unreasonably high freight rates in order that said railroads may be able to recoup losses sustained through the operation of their passenger service?

3. Does the interstate Commerce Commission have authority to enter an order requiring state-prescribed intrastate freight rates to be increased to the interstate level in the absence of an affirmative finding as to what contribu-

tion from intrastate traffic would constitute a fair proportion of the railroads' total income?

4. Does the Interstate Commerce Commission have authority to require railroads to increase state-prescribed intrastate freight rates to the interstate level when said Commission fails to affirmatively find:

(a) What contribution from intrastate traffic will constitute a fair proportion of the railroads' total income;

(b) What amount of revenue is required to enable the railroads to operate efficiently;

(c) That the intrastate railroad rates involved are less than compensatory or insufficient to cover the full cost of service; and

(d) That the maintenance of the intrastate freight rates at the interstate level will be reasonable and is necessary to the operation of a nationally efficient and adequate transportation system?

Statutes Involved

Sections 13(3), 13(4), and 15a of the Interstate Commerce Act, (Title 49 USC 13(3), 13(4), and 15a). See Appendix B attached hereto.

Statement

This proceeding was brought by Wilbur C. King, Jerry W. Carter, and Richard A. Mack, as and constituting the Florida Railroad and Public Utilities Commission, against The United States of America, under Title 28 USC, Sec. 1336 and others, seeking to permanently enjoin, set aside and annul an order of the Interstate Commerce Commission affecting intrastate rates and charges in the State of Florida. Two short-line railroads, the Florida Citrus Commission, Growers and Shippers League of Florida and numerous shippers intervened as parties plaintiff. The

Interstate Commerce Commission and all Class I railroads operating in Florida, intervened as parties defendant.

The case arises out of a report and order of the Interstate Commerce Commission (Docket #30140; 278 I.C.C. 41) entered in a case entitled "Increase in Florida Intrastate Rates." The suit is brought to enjoin and set aside the order of the Interstate Commerce Commission, dated July 25, 1950, of which the report is made a part.

The order of the Interstate Commerce Commission directed the raising of rates and charges for the intrastate transportation of freight over the lines of all railroads operating in the State of Florida to correspond with increases that had theretofore been made in interstate freight rates and charges. It was made pursuant to authority vested in the Interstate Commerce Commission under provisions of Section 13(3), (4), and Section 15a of the Interstate Commerce Act, (Title 49 USC, 13(3), (4) and 15a). The circumstances leading to the investigation by the Interstate Commerce Commission in Docket #30140 are briefly summarized below.

In a proceeding known as Ex Parte 162, *Increased Railway Rates, Fares and Charges, 1946*, 266 ICC 537, the Interstate Commerce Commission, in response to a petition filed by all Class I railroads of the United States, conducted an investigation of interstate railroad freight rates and charges. Upon the showing made by the petitioning railroads of rapidly mounting operating costs and declining passenger revenue, the Interstate Commerce Commission authorized a general increase of 20% in basic interstate freight rates and charges throughout the United States, with certain variations applicable to individual commodities.

Subsequently, in Ex Parte 166, *Increased Freight Rates, 1947*, 269 ICC 33; 270 ICC 81; 270 ICC 93 and 270 ICC 403,

the Interstate Commerce Commission conducted a further general investigation of interstate freight rates and charges. Upon the showing made by the petitioning carriers of the continued increases in operating costs and declining passenger revenue, the Interstate Commerce Commission, finding the existence of an emergency, at first authorized an immediate interim increase of 10% in the interstate freight rates and charges, with certain exceptions, which were to continue pending the completion of the investigation (269 ICC 33).

In a second report in that proceeding the 10% interim increase previously authorized was raised to an interim increase of 20% (270 ICC 81). In a third report (270 ICC 93), the interim increases theretofore allowed were superseded by general percentage increases, varying in amounts in the different territorial divisions of the country, the increases authorized within the territory in which Florida is located being 25%, with certain variations as to particular commodities.

In a fourth and final report in this nation-wide rate proceeding the general increase of 25% was continued and made permanent, with various modifications and variations on individual commodities (270 ICC 403).

Following the action of the Interstate Commerce Commission in Ex Parte 162 and 166, certain railroads operating in Florida made application to the Florida Railroad and Public Utilities Commission to authorize like increases in intrastate rates in the State of Florida. In its Docket No. 1538 the Florida Commission granted the same increases allowed by the Interstate Commerce Commission in Ex Parte 162, except that no increases were allowed on (1) logs moving to the mills, (2) wet phosphate moving from the washer to the drying plant, (3) waste wood moving to retort or recovery plant, and (4) sugar cane moving to

the mills. Also, increases on pulpwood were limited to 9%.

In its Docket No. 1466, by a series of orders, the Florida Commission dealt with applications of the rail lines for general increases similar to those embraced in the Interstate Commerce Commission Ex Parte No. 166 proceeding.

In its Order No. 1466(A), the Florida Commission granted the full 20% increases in effect at that time (April 9, 1948) under orders of the Interstate Commerce Commission in its Docket Ex Parte No. 166, with the following exceptions:

1. No increases were allowed on protective services.
2. No increases were allowed on waste wood to Pensacola, Florida.
3. No increases were allowed on sugar cane from the fields to the mill in Clewiston, Florida.
4. No increases were allowed on fertilizer and fertilizing material.
5. Increases on road aggregates were limited to 10%.
6. Increases on class rates and rates made in relation thereto were limited to 10.25%.

In the No. 1466(C) Order, the Florida Commission continued the 20% increases granted in its Order No. 1466(A) until July 1, 1949, retaining in effect the same exceptions above mentioned. By Order No. 1466(D) these increases and exceptions were continued in effect until after the disposition of Docket No. 30140 by the Interstate Commerce Commission.

Thus, the record in this case shows that in Florida, on intrastate traffic, the Florida Commission granted the rail lines the same increases in freight rates as were granted by the Interstate Commerce Commission in Dockets Ex Parte No. 162 and No. 166, with the exception of 5% granted by the Interstate Commerce Commission in Ex Parte No. 166 and the commodity and class rate exceptions hereinbefore enumerated.

The railroads instituted a 13th Section proceeding before the Interstate Commerce Commission (Docket No. 30140) for the purpose of securing an order of the Interstate Commerce Commission authorizing the carriers to increase the Florida intrastate rates to the same level as the interstate rates approved by the Interstate Commerce Commission in Dockets Ex Parte 162 and Ex Parte 166.

Subsequently, the Interstate Commerce Commission issued its order making the full interstate rates prescribed by it effective on intrastate traffic in Florida.

That Order gave rise to this suit.

The District Court pointed out that:

> "The respective parties to this suit appear to be in accord on the proposition that the Interstate Commerce Commission heard and determined Ex Parte #162 and #166 primarily as revenue cases. They also appear to be in accord that the carriers are making substantial profits out of their over-all freight services and that, considered alone, increases in freight rates would not have been justified on the ground that the carriers needed additional revenue to pay the costs of rendering freight services and a fair return on the carriers' property devoted to such services. The parties are further in accord that the carriers are sustaining heavy losses resulting from passenger operations. Moreover, the evidence before the Interstate Commerce Commission in this case clearly establishes these facts. We conclude from this evidence that the increases in rates authorized by the Interstate Commerce Commission, in Docket #30140, were authorized chiefly because of losses resulting from passenger operations. Increased labor costs accounted for some increased expenses of the carriers, but the principal losses being incurred arose out of passenger operations."

The question, therefore, before the Court is—may the Interstate Commerce Commission increase freight rates generally to enable the carriers to meet deficits incurred from passenger operations?

The Florida Commission, Appellants here, contend this may not be done; that every branch of the service must contribute its proper share of the costs of operation and return on the property devoted to each class of service.

The Florida Commission also contends that the order of the Interstate Commerce Commission nullifying Florida intrastate rates is not based upon clear findings, supported by evidence, of each element essential to the exercise of that power by the Federal Agency.

In its order the Interstate Commerce Commission made no findings as to what contribution from intrastate traffic would constitute a fair proportion of the railroads' total income; the Commission made no findings as to what amount of revenue was required to enable those railroads to operate efficiently; the Commission did not find that the Florida intrastate rates involved were less than compensatory or insufficient to cover the full cost of service; and the Commission did not find that maintenance of intrastate rates at the same level as interstate rates was necessary to the operation of a nationally efficient and adequate transportation system. These are all essential findings but they were not made in the present case and cannot be made because there is no evidence in the record to support them. There is nothing in this record but a disparity in rates and that is not enough to justify the Interstate Commerce Commission in striking down state-prescribed intrastate rates.

The District Court sustained the order of the Interstate Commerce Commission and from the final judgment of the District Court the Florida Commission has brought this appeal to the Supreme Court.

The Questions Are Substantial

The questions presented by this appeal are substantial and are of considerable public importance.

The Supreme Court has never before passed upon the question of whether or not intrastate shippers and receivers of freight can be lawfully required by the Interstate Commerce Commission in the exercise of its 13th Section powers to pay excessive and unreasonably high freight rates so as to enable railroad carriers to recoup losses incurred in their passenger operations.

The Interstate Commerce Commission in the Five Percent Case, 31 ICC 351, said that:

> "We know of no provision of law under which we should be justified in increasing freight rates to provide a return upon property used exclusively in the passenger service, much less to take care of losses incurred in such service. In our opinion each branch of the service should contribute its proper share of the cost of operation and of return upon the property devoted to the use of the public."

More recently the Interstate Commerce Commission has come to the conclusion that it feels "compelled in a general rate case to take the passenger deficit into account in adjustment of freight rates and charges." And, by way of explanation, the Commission has said that "Naturally, this course is borne out of the exigencies of the industry, and leaves us free for subsequent examination of the question when particularized by complaint or in an investigation of our own."

The Interstate Commerce Commission, the railroads, the public and the state regulatory agencies are entitled to a decision by the Supreme Court on this difficult and vexing question.

The remaining questions in this appeal have been decided many times by the Supreme Court. Nevertheless, the order of the Interstate Commerce Commission and the final judgment of the District Court in this proceeding fail to make the findings which the Supreme Court has said are essential to the exercise of the powers conferred by the 13th Section of the Interstate Commerce Act. Because the order of the Interstate Commerce Commission was not based on adequate findings, supported by evidence, the District Court should have declined to enforce its order.

Respectfully submitted,

LEWIS W. PETTEWAY,
Counsel for Plaintiffs.

APPENDIX "A"

IN THE UNITED STATES DISTRICT COURT, IN AND FOR THE NORTHERN DISTRICT OF FLORIDA, TALLAHASSEE DIVISION.

Case No. 292-T-Civil

WILBUR C. KING, JERRY W. CARTER, and RICHARD A. MACK, as and Constituting the FLORIDA RAILROAD AND PUBLIC UTILITIES COMMISSION, *Plaintiffs*,

vs.

THE UNITED STATES OF AMERICA, *Defendant*,

and

INTERSTATE COMMERCE COMMISSION, *Intervening Defendant*

Before: McCORD, Circuit Judge, DeVANE and WHITEHURST, District Judges

DeVANE, *District Judge:*

This an action brought by the Florida Railroad and Public Utilities Commission, and the members thereof, against The United States of America, under Title 28 USC, Sec. 1336 and others, seeking to permanently enjoin, set aside and annul an order of the Interstate Commerce Commission affecting intrastate rates and charges in the State of Florida. Two short-line railroads, the Florida Citrus Commission, Growers and Shippers League of Florida and numerous shippers intervened as parties plaintiff. The Interstate Commerce Commission and all Class I railroads operating in Florida, intervened as parties defendant.

The case arises out of a report and order of the Interstate Commerce Commission (Docket #30140; 278 I.C.C., 41) entered in a case entitled "Increase in Florida Intrastate Rates." The suit is brought to enjoin and set aside the order of the Interstate Commerce Commission dated July 25, 1950, of which the report is made a part.

The order, complained of, directed the raising of rates and charges for the intrastate transportation of freight over the lines on all railroads operating in the State of Florida to correspond with increases that had theretofore been made in interstate freight rates and charges. It was made pursuant to authority vested in Interstate Commerce Commission under provisions of Section 13(3), (4) and Section 15(1) of the Interstate Commerce Act, (Title 49 USC, 13(3), (4); and 15(1)). The circumstances leading to the investigation by the Interstate Commerce Commission in Docket #30140 are briefly summarized below.

In a proceeding known as Ex Parte 162, *Increased Railway Rates, Fares and Charges, 1946* 266, ICC, 537, the Interstate Commerce Commission, in response to a petition filed by all Class I railroads of the United States, conducted an investigation of interstate railroad freight rates and charges. Upon the showing made by the petitioning railroads of rapidly mounting operating costs and declining passenger revenue, the Interstate Commerce Commission authorized a general increase of 20% in basic interstate freight rates and charges throughout the United States, with certain variations applicable to individual commodities.

Subsequently, in Ex Parte 166 *Increased Freight Rates, 1947*, 269 ICC 33; 270 ICC, 81; 270 ICC, 93 and 270 ICC, 403, the Interstate Commerce Commission conducted a further general investigation of interstate freight rates and charges. Upon the showing made by the petitioning carriers of the continued increases in operating costs and declining passenger revenue, the Interstate Commerce Commission, finding the existence of an emergency, at first authorized an immediate interim increase of 10% in the interstate freight rates and charges, with certain exceptions, which were to continue pending the completion of the investigation. (269 ICC, 33).

In the second report in this proceeding the 10% interim increase previously authorized was raised to an interim increase of 20% (270 ICC, 81). In the third report, (270 ICC, 93), the interim increases theretofore allowed were superseded by general percentage increases, varying in

amounts in the different territorial divisions of the country, the increases authorized within the territory in which Florida is located being 25%, with certain variations as to particular commodities.

In the fourth and final report in this case the general increase of 25% was continued and made permanent, with various modifications and variations on individual commodities (270 ICC, 403).

The parties are not in entire agreement as to the average percentage increases allowed by the Interstate Commerce Commission in its several decisions, but the question is not of importance in the decision of this case and the percentages used above are for illustrative purposes only and fairly well represent the increases authorized.

Following the action of the Interstate Commerce Commission in Ex Parte 162 and 166, the railroads operating in Florida, (as did the railroads operating in every other State in the United States), made application to the Florida Railroad and Public Utilities Commission to authorize like increases in intrastate rates in the State of Florida. In Florida Commission Docket #1538, considering the increases granted by the Interstate Commerce Commission in its Docket #162, the Florida Commission granted the full increases requested except that no increases were allowed on 1) logs moving to the mills, 2) wet phosphate moving from the washer to the drying plant, 3) waste wood moving to retort or recovery plant, and 4) sugar cane moving to the mills. Also increases on pulpwood were limited to 9%.

In Docket #1466, by a series of orders, the Florida Commission dealt with applications of the rail lines for general increases similar to those embraced in the Interstate Commerce Commission Ex Parte #166 proceeding.

In Order #1466(A), the Florida Commission granted the full 20% increases in effect at that time (April 9, 1948) under orders of the Interstate Commerce Commission in its Docket Ex Parte #166, with the following exceptions:

1. No increases were allowed on protective services.
2. No increases were allowed on waste wood to Pensacola, Fla.

3. No increases were allowed on sugar cane from the fields to the mill in Clewiston, Florida.

4. No increases were allowed on fertilizer and fertilizing material.

5. Increases on road aggregates were limited to 10%.

6. Increases on class rates and rates made in relation thereto were limited to 10.25%.

In the #1466(C) Order, the Florida Commission continued the 20% increases granted in its Order #1466(A), until July 1, 1949, retaining in effect the same exceptions above mentioned. By Order #1466(D) these increases and exceptions were continued in effect until after the disposition of Docket #30140 by the Interstate Commerce Commission.

Thus, the record in this case shows that in Florida, on intrastate traffic, the Florida Commission granted the rail lines the same increases in freight rates as were granted by the Interstate Commerce Commission in Dockets, Ex Parte #162 and #166, with the exception of the 5% granted by the Interstate Commerce Commission in Ex Parte #166 and the commodity and class rate exceptions hereinbefore enumerated.

The case instituted by the carriers before the Interstate Commerce Commission (Docket #30140) was for the purpose of securing an order of the Interstate Commerce Commission authorizing the carriers to also put into effect the increases in rates approved by the Interstate Commerce Commission for interstate traffic, but disapproved by the Florida Commission on intrastate traffic.

Since the Interstate Commerce Commission issued its order making the full interstate rates prescribed by it effective on intrastate traffic in Florida, certain changes have been made in rates applicable to road aggregates, wastewood, sugar cane, fertilizer and fertilizing materials, the latter applicable only on the Florida East Coast Railroad. Otherwise, rates prescribed by the Interstate Commerce Commission, for interstate traffic, have also been made effective by the Interstate Commerce Commission for the movement of intrastate traffic in Florida.

The respective parties to this suit appear to be in accord on the proposition that the Interstate Commerce Commission heard and determined Ex Parte #162 and #166 primarily as revenue cases. They also appear to be in accord that the carriers are making substantial profits out of their over-all freight services and that, considered alone, increases in freight rates would not have been justified on the ground that the carriers needed additional revenue to pay the costs of rendering freight services and a fair return on the carriers' property devoted to such services. The parties are further in accord that the carriers are sustaining heavy losses resulting from passenger operations. Moreover, the evidence before the Interstate Commerce Commission in this case clearly establishes these facts. We conclude from this evidence that the increases in rates authorized by the Interstate Commerce Commission, in Docket #30140, were authorized chiefly because of losses resulting from passenger operations. Increased labor costs accounted for some increased expenses of the carriers, but the principal losses being incurred arose out of passenger operations.

The question, therefore, before the court is—may the Interstate Commerce Commission increase freight rates generally to enable the carriers to meet deficits incurred from passenger operations?

Plaintiffs contend this may not be done; that every branch of the service must contribute its proper share of the costs of operation and return on the property devoted to each class of service. They rely upon the 5% Case, 31 I. C. C. 351, Northern Pacific Railway v. North Dakota, 236 U. S. 585, Norfolk & Western Railway v. West Virginia, 236 U. S. 605, and other cases to the same effect.

The cases relied upon by plaintiffs to support this proposition were decided prior to 1940 when the Interstate Commerce Act was amended by including therein the National Transportation Policy, which the Interstate Commerce Commission was directed to follow in prescribing rates and charges on all modes of transportation subject to the provisions of the Act, 49 U. S. C. 4281. In Railroad Commission v. Chicago, B. & Q. Railroad Company, 257 U. S. 563,

and again in Florida v. U. S., 292 U. S. 1, the Supreme Court of the United States held that the Transportation Act, 1920, imposed an affirmative duty on the Interstate Commerce Commission "to fix rates and to take other important steps to maintain an adequate railway service for the people of the United States." And, again in North Carolina v. United States, 325 U. S. 507, the Supreme Court re-affirmed these earlier holdings and held that where intrastate traffic was not contributing its fair share of the revenue required to enable the carriers to render adequate and efficient transportation service an order of the Interstate Commerce Commission directing an increase in intrastate rates, for such purpose, would be valid, if supported by evidence justifying the order.

Relying upon these decisions of the Supreme Court of the United States, this court finds and holds that the Interstate Commerce Commission, in this case, had the authority to enter the order here questioned for the purpose of providing the carriers with needed revenue, even though freight rates were increased beyond the point where such rates provided more revenue than was required to pay the costs for rendering freight services and a fair return on carriers' property devoted to such services.

Plaintiffs contend that should the court find that the Interstate Commerce Commission is vested with authority to increase freight rates, generally, to enable the carriers to meet deficits from passenger operations, nevertheless, the order of the Interstate Commerce Commission, in this case, does not comply with all the requirements laid down by the Supreme Court of the United States in North Carolina v. United States, supra. We think it does.

While it is doubtful if the order of the Interstate Commerce Commission, in Docket #30140, could be sustained, on the grounds that the action of the Florida Commission resulted in undue and unreasonable advantage, preference of prejudice, as between persons and localities, in intrastate commerce in Florida on the one hand and interstate commerce on the other (Florida v. U. S., 282 U. S. 194), yet, it is clear from the evidence in the case that it did result in undue, unreasonable and unjust discrimination against

interstate commerce and undue preference as to intrastate commerce, in violation of Section 13(4) of the Interstate Commerce Act, in that it failed to place upon intrastate commerce the burden cast upon such commerce, by the order of the Interstate Commerce Commission, entered in Ex Parte #162 and #166, which was intended to provide needed revenue from both intrastate and interstate commerce, to meet the money requirements of the carriers. The Interstate Commerce Commisison found, in this case, that failure of the Florida Commission to authorize increases in the rates in question, resulted in a loss of, at least $915,325.00 per annum to the carriers. And, as evidence of the need for this revenue, counsel for the Florida Commission stated, on oral argument, and in their brief, that the three major railroads operating in Florida sustained deficits from passenger operations of $21,000,000.00 for the year, 1948, the last full year's operations involved in this case.

The intervening plaintiffs interested in specific rates involved in this case attacked the validity of the order of the Interstate Commerce Commission on the ground that the rates prescribed are so high that the carriers, in fact, lost revenue instead of gained revenue, which was the sole purpose of the increases in rates and the purpose sought to be accomplished failing, the order prescribing the rates is illegal. They introduced evidence before the Interstate Commerce Commission supporting their contention. The carriers introduced evidence denying the claims of the shippers. The Interstate Commerce Commission considered all this evidence and, after weighing it, decided against the intervening plaintiffs. This court does not have the authority to over-ride the decision of the Interstate Commerce Commission on this factual question, supported by evidence as it is in this record, Ohio v. U. S., 292 U. S. 498.

Plaintiffs contend further that conceding the power of the Interstate Commerce Commission to increase freight rates, solely for the purpose of obtaining needed additional revenue to meet passenger deficits, yet every shipper affected by such order had the right to put in issue before the Interstate Commerce Commission, and put in issue

before this court, the reasonableness of any specific rate applicable to any particular commodity.

The court is cited to and finds no authority that sustains this contention of the intervening plaintiffs. Moreover, if they were right in their contention the effect would be to nullify the Declared Policy of Congress, incorporated in the Interstate Commerce Act.

Since the Interstate Commerce Commission has been vested with the power to increase freight rates, generally, to give carriers needed additional revenue, increases of this character, in fairness to all, should be made to apply to intrastate as well as interstate commerce, otherwise unjust discrimination would exist between such commerce.

If the intervening plaintiffs are entitled to relief in so far as any specific individual rate is concerned he may take his case to the Interstate Commerce Commission and there secure any modification to which he is entitled. In *North Carolina* v. *United States*, *supra*, the Supreme Court on this point, said: "The very nature of such a broad general order requires that it contain a saving clause for future modification and adjustment of particular rates." This saving clause was incorporated in the order of the Interstate Commerce Commission in this case and certain of the rates incorporated in the original order entered by the Interstate Commerce Commission have already been modified or removed from the order and the court has no doubt that in the future additional modifications may be made where they are justified by the facts.

We conclude that the order of the Interstate Commerce Commission should be sustained.

Dated at Tallahassee, Florida, this 29th day of June, 1951.

(S) LEON MCCORD,
Circuit Judge.

(S) DOZIER A. DEVANE,
District Judge.

(S) GEORGE W. WHITEHURST,
District Judge.

IN THE UNITED STATES DISTRICT COURT, IN AND FOR THE NORTHERN DISTRICT OF FLORIDA, TALLAHASSEE DIVISION

Case No. 292-T-Civil

WILBUR C. KING, JERRY W. CARTER and RICHARD A. MACK, as and constituting the FLORIDA RAILROAD AND PUBLIC UTILITIES COMMISSION, *Plaintiffs*,

vs.

THE UNITED STATES OF AMERICA, *Defendant*.

and

INTERSTATE COMMERCE COMMISSION, *Intervening Defendant*.

FINAL JUDGMENT

This cause came on for final hearing before a Court consisting of Honorables Leon McCord, Circuit Judge, Dozier A. DeVane and George W. Whitehurst, District Judges.

Evidence was presented and arguments heard, and, for reasons stated in an Opinion filed herewith, it is considered, ordered and adjudged that the relief sought by plaintiffs herein be and the same is hereby denied; that plaintiffs take nothing by this suit and defendants go hence without day. The costs of this case shall be taxed by the Clerk upon an appropriate bill filed therefor against the Florida Railroad and Public Utilities Commission, plaintiff.

Done and ordered at Jacksonville, Florida, this 16th day of July, 1951.

(S) LEON MCCORD,
Circuit Judge.

(S) DOZIER A. DEVANE,
District Judge.

(S) GEORGE W. WHITEHURST,
District Judge.

APPENDIX "B"

Section 13 (3)

"Whenever in any investigation under the provisions of this part, or in any investigation instituted upon petition of the carrier concerned, which petition is hereby authorized to be filed, there shall be brought in issue any rate, fare, charge, classification, regulation, or practice, made or imposed by authority of any State, or initiated by the President during the period of Federal control, the Commission, before proceeding to hear and dispose of such issue, shall cause the State or States interested to be notified of the proceeding. The Commission may confer with the authorities of any State having regulatory jurisdiction over the class of persons and corporations subject to this part or part III with respect to the relationship between rate structures and practices of carriers subject to the jurisdiction of such State bodies and of the Commission; and to that end is authorized and empowered, under rules to be prescribed by it, and which may be modified from time to time, to hold joint hearings with any such State regulating bodies on any matters wherein the Commission is empowered to act and where the rate-making authority of a State is or may be affected by the action taken by the Commission. The Commission is also authorized to avail itself of the cooperation, services, records, and facilities of such State authorities in the enforcement of any provision of this part or part III."

Section 13 (4)

"Whenever in any such investigation the Commission, after full hearing, finds that any such rate, fare, charge, classification, regulation, or practice causes any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce on the one hand and interstate or foreign commerce on the other hand, or any undue, unreasonable, or unjust discrimination against interstate or foreign commerce, which is hereby forbidden and declared to be unlawful, it shall prescribe the rate, fare,

or charge, or the maximum or minimum, or maximum and minimum, thereafter to be charged, and the classification, regulation, or practice thereafter to be observed, in such manner as, in its judgment, will remove such advantage, preference, prejudice, or discrimination. Such rates, fares, charges, classifications, regulations and practices shall be observed while in effect by the carriers parties to such proceeding affected thereby, the law of any State or the decision or order of any State authority to the contrary notwithstanding."

Section 15a

"In the exercise of its power to prescribe just and reasonable rates the Commission shall give due consideration, among other factors, to the effect of rates on the movement of traffic by the carrier or carriers for which the rates are prescribed; to the need, in the public interest, of adequate and efficient railway transportation service at the lowest cost consistent with the furnishing of such service; and to the need of revenues sufficient to enable the carriers, under honest, economical, and efficient management to provide such service."

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. ~~444~~ 9

WILBUR C. KING, JERRY W. CARTER AND RICHARD A. MACK, AS AND CONSTITUTING THE FLORIDA RAILROAD AND PUBLIC UTILITIES COMMISSION,

Appellants,

vs.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF FLORIDA

MOTION OF ATLANTIC COAST LINE RAILROAD COMPANY, ET AL., TO AFFIRM

JAMES A. BISTLINE,
FRANK W. GWATHMEY,
Counsel for Appellees.

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SUPREME COURT OF THE UNITED STATES

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MOTION OF ATLANTIC COAST LINE RAILROAD COMPANY, ET AL., TO AFFIRM

Atlantic Coast Line Railroad Company and other railroads operating in the State of Florida, intervening defendants-appellees, believing that the matters set forth below demonstrate the lack of substance in the questions

raised by this appeal, pursuant to the provisions of Rule 12, paragraph 3, of the Rules of the Supreme Court file this their motion to affirm the judgment of the court below.

I

The Issue Primarily Raised by This Appeal

Appellant's Jurisdictional Statement, under the caption "Questions Presented", contains the following:

> "1. Does the Interstate Commerce Commission have authority to require railroads to increase their intrastate freight rates generally to enable said carriers to meet deficits incurred from their passenger operations?
>
> "2. Can intrastate shippers and receivers of freight be required lawfully by common carrier railroads to pay excessive and unreasonably high freight rates in order that said railroads may be able to recoup losses sustained through the operation of their passenger service?"

That the questions thus set out represent the issue primarily raised by appellant is recognized in the opinion of the court below (Appendix "a" to Jurisdictional Statement) wherein the court stated:

> "The question, therefore, before the court is—may the Interstate Commerce Commission increase freight rates generally to enable the carriers to meet deficits incurred from passenger operations?
>
> "Plaintiffs contend this may not be done; that every branch of the service must contribute its proper share of the costs of operation and return on the property devoted to each class of service. They rely upon the 5% Case, 31 I. C. C. 351, Northern Pacific Railway v. North Dakota, 236 U. S. 585, Norfolk & Western Railway v. West Virginia, 336 U. S. 605, and other cases to the same effect."

II

Statement of Facts

In proceedings known as Ex Parte No. 162, *Increased Railway Rates, Fares and Charges, 1946*, 266 I. C. C. 537, and Ex Parte No. 166, *Increased Freight Rates, 1947*, 269 I. C. C. 33, 270 I. C. C. 81, 270 I. C. C. 93, and 270 I. C. C. 403, the Interstate Commerce Commission, acting in pursuance of the authority and duty vested in it by Sections 13(2) and 15a(2) of Part I, Interstate Commerce Act (U. S. C. Title 49, Sections 13(2) and 15a(2)), and by the declaration of National Transportation Policy which now appears as a preliminary part of said Act (54 Stat. 899; 49 U. S. C. 4281 (1940)—see Appendix), conducted successive general investigations of the interstate freight rates and charges of the railroads throughout the country. Upon a showing by the railroads of rapidly mounting operating costs, due particularly to repeated increases in wage costs, increased costs of materials and supplies and increased taxes, and the urgent need of revenue to enable them to maintain adequate transportation service, the Commission authorized successive general percentage increases in basic interstate freight rates and charges with increases in varying amounts in the case of certain particular commodities.

In the first proceeding, Ex Parte No. 162, the Commission made the following finding (266 I. C. C., at p. 614):

> "1. It is requisite for the carrying out of the purposes of the national transportation policy, and the development, coordination, and preservation of a national transportation system adequate to meet the needs of commerce, the postal service, and the national defense, and in order that freight rates and charges shall be such as to move the greatest volume of traffic, while providing adequate and efficient transportation at the lowest cost consistent with the furnishing of such

service, and to enable the petitioning carriers by railroad and by water under honest, economical, and efficient management to provide such service, that there be substantial increases in the basic freight rates and charges of the petitioners, and the continued maintenance of the present temporarily increased basis of passenger fares and charges."

In the second proceeding, Ex Parte No. 166, upon a showing by the railroads that they had been confronted with additional and substantial increases in wages of employees, as well as further increases in costs of materials and supplies and taxes, the Commission on account of the emergency of the situation at first authorized immediate additional increases in interstate freight rates and charges which were in the nature of interim increases to continue pending completion of the investigation. In authorizing such emergency interim increases the Commission stated in the Ex Parte No. 166 report of October 6, 1947 (269 I. C. C., at p. 53):

"We are fully conscious of the fact that freight rates must be paid by shippers and receivers of freight and ultimately borne by the commerce of the country. It is clear to us, however, that increasing costs of operation now pose, and unchecked will continue to pose, a serious threat to the maintenance of adequate transportation service; that the railroads as a whole, and many of the most important railroads of the country in particular, are definitely facing such a threat at the present time; that the public vitally needs an efficient transportation service, and imperatively demands a transportation system that is adequate for the national defense in any emergency."

By subsequent reports in the same proceeding the interim increases previously authorized were superseded by general increases as finally approved.

The increases successively authorized were accordingly made effective by the railroads in respect to the interstate rates throughout the United States, including the interstate rates applicable between points in the state of Florida and points in other states as well as elsewhere throughout the south.

In both the Ex Parte No. 162 and Ex Parte No. 166 proceedings, above referred to, the Commission in its consideration of the revenue needs of the railroads dealt throughout with the results of operations *as a whole*, including both freight and passenger operations. As will appear from the reports in those cases (266 I. C. C., at p. 605, 270 I. C. C., at p. 425) the Commission had before it and duly considered the fact that following the war years and commencing in 1944 the railroads of the country had sustained, and were continuing to sustain, serious and unavoidable losses in connection with their passenger service. In recognition of the fact that railroad revenues are derived to a substantial extent from intrastate traffic in the several states, the Commission in determining the amounts of the authorized rate increases and estimating the anticipated increase in railroad revenues to be derived therefrom also took into account the revenue derivable from both intrastate and interstate operations. Anticipating that the various state commissions would be requested to authorize corresponding increases in intrastate rates, a designated committee of cooperating state commissioners was invited to and did sit with the Federal Commission during the hearings and at the oral arguments and thereafter participated in its deliberations.

In the final report in Ex Parte No. 166 (270 I. C. C., at p. 463) it was stated that the Committee of Cooperating State Commissioners "authorize us to state that they concur

in the foregoing report." It was also said (270 I. C. C., at p. 440):

> "Considering the entire record upon this feature of the proceeding, we conclude that the orders heretofore entered, *especially when action by the State authorities is finally completed upon the carriers' proposals*, meet the emergency needs of the petitioning carriers, as shown by the record, supplemented by examination of the reports and returns which we are privileged to use under the general stipulation." (Italics supplied.)

The commissions of various states—including, among others, the states of Alabama, Tennessee, Texas, Arizona and Florida—having thereafter failed and refused to sanction increases corresponding in full with the interstate increases authorized by the Interstate Commerce Commission, proceedings under Section 13(3) (4) of the Act (49 U. S. C. section 13(3) (4)) were instituted in respect to the intrastate rates in each of the states named, as the result of which the Commission after hearings found in each instance that the failure of the state authorities to allow the full amount of increases corresponding with the increases in interstate rates caused undue, unreasonable and unjust discrimination against interstate commerce which by Section 13(4) is forbidden and declared to be unlawful (*Increases in Alabama Freight Rates and Charges*, 274 I. C. C. 439; *Increases in Tennessee Freight Rates and Charges*, 272 I. C. C. 625; *Texas Intrastate Rates*, 273 I. C. C. 749; *Increases in Arizona Freight Rates and Charges*, 270 I. C. C. 105). The Florida Railroad and Public Utilities Commission brought this action to enjoin and set aside the order made in the thirteenth section case relating to Florida rates, *Increases in Florida Intrastate Rates*, 278 I. C. C. 41, whereby the Commission directed a raising of the intrastate rates within Florida by amounts corresponding gener-

ally with the amounts of the increases theretofore authorized and made effective in the interstate rates applicable to and from points in Florida.

The increases so directed in *Increases in Florida Intrastate Rates, supra*, related in part to the entire body of Florida intrastate rates and in part to various commodities and classes of traffic as to which the Florida Commission had either permitted no increases or had authorized increases in amounts less than the corresponding increases in the interstate rates. In its report in that proceeding (278 I. C. C., at p. 65) the Commission found and stated that the differences between the authorized intrastate and interstate increases meant a difference in and loss of revenue to the railroads in an estimated amount of more than $915,325 per annum, and that the great preponderance of this severe loss was falling upon the three principal railroads operating in Florida, namely, Atlantic Coast Line, Seaboard Air Line and Florida East Coast Railway.

III

Appellant's Contentions Unsupported

Upon the issue above stated, and recognized by the court below as the primary issue in the case, the conclusion of the court below was stated as follows:

> "The cases relied upon by plaintiffs to support this proposition were decided prior to 1940 when the Interstate Commerce Act was amended by including therein the National Transportation Policy, which the Interstate Commerce Commission was directed to follow in prescribing rates and charges on all modes of transportation subject to the provisions of the Act, 49 U. S. C., 4281. In Railroad Commission v. Chicago, B & Q Railroad Company, 257 U. S. 563, and again in Florida v. U. S., 292 U. S., 1, the Supreme Court of

the United States held that the Transportation Act, 1920, imposed an affirmative duty on the Interstate Commerce Commission 'to fix rates and to take other important steps to maintain an adequate railway service for the people of the United States.' *An*, again in North Carolina v. United States, 325 U. S., 507, the Supreme Court re-affirmed these earlier holdings and held that where intrastate traffic was not contributing its fair share of the revenue required to enable the carriers to render adequate and efficient transportation service an order of the Intrastate Commerce Commission directing an increase in intrastate rates, for such purpose, would be valid, if supported by evidence justifying the order.

"Relying upon these decisions of the Supreme Court of the United States, this court finds and holds that the Interstate Commerce Commission, in this case, had the authority to enter the order here questioned for the purpose of providing the carriers with needed revenue, even though freight rates were increased beyond the point where such rates provided more revenue than was required to pay the costs for rendering freight services and a fair return on carriers' property devoted to such services."

1. As the court below thus found, the cases cited and relied upon clearly lend no support to appellant's contentions here. *Northern Pacific Ry. Co.* v. *North Dakota*, 236 U. S. 585, and *Norfolk & W. Ry. Co.* v. *West Virginia*, 236 U. S. 605 (decided in 1915), both related to the alleged confiscatory nature of transportation charges prescribed by state authority. In the *Northern Pacific case* the Court, adhering to well established principles, held that the state of North Dakota could not justify the imposition by statute of charges for the transportation of lignite coal, such charges having been found to yield revenue less than or barely equal to the computed cost of the transportation of that traffic, upon the theory that the railroad was deriving

adequate revenues from its intrastate business as a whole. In the *Norfolk & Western case*, which followed the *Northern Pacific case* and was decided on the same day, the Court similarly held invalid a statute of West Virginia fixing a passenger fare of 2 cents per mile, as to which it appeared that the revenue derived therefrom would be less than the cost of conducting the passenger transportation.

No confiscation is alleged in this proceeding, which relates solely to questions arising under Section 13(3) (4) of the Interstate Commerce Act. Moreover, both of the above cases cited by appellant were decided long prior to the enactment of the Transportation Act of 1940 and the declaration therein of the "National Transportation Policy" whereby Congress has directed, as the rule of rate making to be observed by the Commission, that all of the provisions of the Interstate Commerce Act shall be administered

> "to the end of developing, coordinating, and preserving a national transportation system by water, highway, and rail, as well as other means, adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense."

By Section 15a(2) of the Act the Commission is further directed, in the exercise of its power to prescribe just and reasonable rates, to give due consideration

> "to the need in the public interest, of adequate and efficient railway transportation service at the lowest cost consistent with the furnishing of such service; and to the need of revenues sufficient to enable the carriers, under honest, economical, and efficient management, to provide such service."

The general rate increases authorized by the Commission in the Ex Parte No. 162 and Ex Parte No. 166 proceedings were directed to the end of developing and preserving the

national railway transportation system, the maintenance of which the Commission had found to be dangerously threatened on account of the increased operating costs and declining revenues of the railroads. . The increases in Florida intrastate rates as required by the Commission in the thirteenth section case, *Increases in Florida Intrastate Rates, supra,* were likewise directed to the preservation of the national railway transportation system, of which the railroads serving the state of Florida constitute an important part. If the Commission, in dealing alike with the interstate rates and the intrastate rates in Florida, is without authority to consider railroad revenues as derived from their operations *as a whole,* including both freight and passenger operations, it must follow inevitably that the Commission will be powerless to carry out the mandate of the statute. And if continuing and unavoidable losses from passenger operations may not be offset by increases in freight rates, so long as neither the interstate nor intrastate rates are raised to an unreasonably high level, the continued maintenance of an adequate national transportation system must inevitably be defeated. A railroad might conceivably become bankrupt because of irremovable passenger deficits although it could be saved by the application of freight rates which, although higher than they otherwise would be, cannot be said to be unfair or unreasonable. Such question of reasonableness is one for decision by the Commission and upon this question the Commission's ultimate findings, upon the evidence of record, contain the following as Finding No. 3 (278 I.C.C., at p. 72):

> "3. That the present interstate freight rates and charges within Florida and between points in Florida and points in other States are just and reasonable, including those proposed within Florida in I. and S. No. 4646, to the extent above found just and reasonable; and that intrastate rates, charges, and minimum

weights herein approved will not exceed a just and reasonable level."

In recognition of the fact that the findings and order deal with the entire body of Florida intrastate rates, and following expressions of the Supreme Court in *North Carolina* v. *United States*, 325 U. S. 507, and other cases, the Commission also accompanied its findings with the following saving clause (278 I.C.C., p. 74):

> "These findings are without prejudice to the right of the authorities of the State of Florida, or any other interested party, to apply for a modification thereof as to any specific intrastate rates or charges on the ground that they are not related to the interstate rates or charges on like traffic in such a way as to contravene the provisions of the Interstate Commerce Act."

2. Appellant asserts that the question here raised has never been decided by the Supreme Court. It may be true that such question has not heretofore been presented directly, but it is no less true that the Court in a long line of cases has upheld orders of the Commission under Section 13 similarly directing the raising of intrastate rates where state commissions have refused to sanction increases following general increases authorized by the Interstate Commission, such general increases having been determined upon consideration of revenue needs of the railroads resulting from operations as a whole, including both freight and passenger operations. *United States* v. *Louisiana*, 290 U. S. 70, 78 L. ed. 181; *Railroad Commission* v. *Chicago, B. & Q. R. Co.*, 257 U. S. 563, 66 L. ed. 371; *New York* v. *United States*, 257 U. S. 591, 66 L. ed. 385; *Ga. Pub. Serv. Comm.* v. *United States*, 283 U. S. 765, 75 L. ed. 1397; *Alabama* v. *United States*, 283 U. S. 776, 75 L. ed. 1406; *Florida* v. *United States*, 292 U. S. 1, 78 L. ed. 1077.

Appellant relies also upon expressions appearing in the early *Five Percent Case*, 31 I.C.C. 351 (decided July 29, 1914). In recognition, however, of changed conditions brought about by subsequent amendments of the governing statute, the Commission has long since felt compelled to reconsider the conclusions stated in that proceeding, as will appear from a series of later decisions, including *Fifteen Percent Case, 1931*, 178 I.C.C. 539, *Fifteen Percent Case, 1937-1938*, 226 I.C.C. 41, and including also Ex Parte No. 162 and Ex Parte No. 166 as well as the more recent Ex Parte No. 168, *Increased Freight Rates, 1948*, 276 I.C.C. 9.

Appellant has cited no decision of the courts or the Commission which sustains its contentions here. On the other hand, the decisions of the Supreme Court above referred to, as well as many others, amply support the conclusions of the court below.

3. The question here raised by appellant involves necessarily the validity of the Commission's findings and authorizations with respect to the *interstate* rates throughout the United States, including the interstate rates to and from Florida, as made in both Ex Parte No. 162 and Ex Parte No. 166, as well as the findings thereafter made in the thirteenth section case, *Increases in Florida Intrastate Rates, supra*. This proceeding concerns the relationship between the interstate and intrastate rates. Like any similar proceeding under Section 13(3)(*a*), it involves necessarily the reasonableness of the interstate rates to and from Florida, as well as the reasonableness of the intrastate rates applicable within the state. *Georgia Public Service Commission* v. *United States*, 283 U. S. 765; *United States* v. *Louisiana*, 290 U. S. 70. When increases in the interstate rates were authorized, after due hearing, in Ex Parte No. 162 and Ex Parte No. 166 and were made effective by the railroads,

appellant like any other interested parties in said proceedings had every right and opportunity, had they elected to do so, to seek relief in the courts and to raise at that time any and all questions with respect to the power of the Commission to authorize general increases in freight rates for the purpose of offsetting railroad deficits from passenger operations, losses resulting from increased costs of labor, materials and supplies, or losses for any other reasons. Having failed and neglected to take such action appellant is in no position at this late date to raise such question by indirection in this proceeding, which relates to the removal of unlawful discrimination resulting from differences between the intrastate rates in Florida, on the one hand, and the interstate rates already in effect, on the other hand.

IV

Additional Questions

Appellant's statement of "Questions Presented" contains also the following additional questions:

> "3. Does the Interstate Commerce Commission have authority to enter an order requiring state-prescribed intrastate freight rates to be increased to the interstate level in the absence of an affirmative finding as to what contribution from intrastate traffic would constitute a fair proportion of the railroads' total income?
>
> "4. Does the Interstate Commerce Commission have authority to require railroads to increase state-prescribed intrastate freight rates to the interstate level when said Commission fails to affirmatively find:
>
> (a) What contribution from intrastate traffic will constitute a fair proportion of the railroads' total income;
>
> (b) What amount of revenue is required to enable the railroads to operate efficiently;

(c) That the intrastate railroad rates involved are less than compensatory or insufficient to cover the full cost of service; and

(d) That the maintenance of the intrastate freight rates at the interstate level will be reasonable and is necessary to the operation of a nationally efficient and adequate transportation system?"

The Commission made no order requiring the intrastate freight rates in Florida "to be increased to the interstate level" as here stated. On the contrary, in the thirteenth section proceeding, *Increases in Florida Intrastate Rates, supra*, the Commission merely directed that the intrastate rates be increased generally by amounts corresponding with the amounts of the increases in the interstate rates as theretofore authorized in Ex Parte No. 162 and Ex Parte No. 166 and made effective by the railroads. The Commission also dealt separately with the intrastate rates on certain particular commodities such, for example, as pulpwood, fertilizer and fertilizer materials, and several others, and specifically designated the manner and the extent to which those particular intrastate rates should be increased.

It cannot be asserted successfully that the Commission failed to make all necessary and appropriate findings, supported by evidence, "as to what contribution from intrastate traffic will constitute a fair proportion of the railroads' total income." In the report in *Increases in Florida Intrastate Rates, supra*, which report is made a part of the order, it is stated, at page 67:

"Our power to require an increase in intrastate rates depends upon whether intrastate traffic is contributing its fair share of the earnings required to meet maintenance and operating costs and to yield a fair return on the value of the property devoted to the transportation service, both interstate and intrastate. *Respond-*

ents are not seeking an increase in the intrastate revenue sufficient to give them a fair return on the value of their property devoted to freight service but merely to secure a contribution to maintenance and operating costs, including taxes, more nearly proportionate to the contribution thereto made prior to the increases in Ex Parte No. 162 and Ex Parte No. 166. We may properly use such prior contribution as a valid criterion of fairness, in the light of which the Florida intrastate rates and charges in 1947 and 1948 afforded a disproportionately small share of the revenue required to meet the costs of the service in Florida. This condition has been aggravated by the continuing rise in operating expenses following Ex Parte No. 162 and Ex Parte No. 166, which impelled us to authorize additional increases in freight rates and charges in Ex Parte No. 168." (Emphasis supplied.)

The Commission, in other words, recognized that the earnings of the Florida railroads had fallen to such a low level that the increases proposed in intrastate rates, even if such increases should be allowed, would be wholly insufficient to enable these railroads to earn a fair return upon the value of their properties, and that they were seeking merely to secure a contribution from this traffic to maintenance and operating expenses proportionate to the contribution made prior to the general rate increases authorized in Ex Parte No. 162 and Ex Parte No. 166 in order to meet heavily increased costs of operation and declining revenues. The Commission found that the "fair proportionate share" to be contributed by the Florida traffic was the same proportionate share which such traffic had theretofore been contributing.

We know of no decision of the Supreme Court to the effect that before the Commission may order a raising of intrastate rates under Section 13(3)(4) of the Act it must do the impossible and undertake to name in dollars and

cents the amount of revenue which the railroads require in order to enable them to "operate efficiently." The railroads, of course, must be and are operated efficiently, in times of depression as well as times of prosperity, but even though so operated their earnings, by reason of lack of traffic or unduly low rates, may fall to a level which threatens their ability to provide "adequate" transportation service within the meaning of Section 15a of the Act.

Neither do we understand that the Court has ever declared that as a condition precedent to the making of an order under Section 13(3)(4) the Commission must affirmatively find that the intrastate rates are "less than compensatory or insufficient to cover the full cost of service." In *North Carolina* v. *United States*, 325 U.S. 507, upon facts very different from those presented herein, including the fact that the North Carolina railroads were at that time enjoying an unprecedented degree of prosperity, the Court set aside an order by the Commission directing a raising of intrastate passenger coach fares of North Carolina railroads upon the ground that the order was not shown to be "based on adequate findings supported by evidence" (325 U.S., p. 520). The Court mentioned, among other things, that the Commission had failed to "indicate that the North Carolina railroad rates here involved were less than compensatory or insufficient to cover the full cost of service." This, we submit, falls far short of a declaration by the Court that such a finding is essential to the support of an order. A requirement of that sort would obviously defeat the whole intent and purpose of Section 13(4) and would reduce virtually to a state of impotency the power of the Commission under that section. Furthermore, it would render that section wholly unnecessary since if actual confiscation can be shown the carriers have an adequate

and complete remedy by direct appeal to the courts. The order here in question deals with the entire body of the intrastate freight rates in Florida, including hundreds of rates on different commodities and between different points, some of which may be relatively high and others relatively low. It would be utterly impracticable to show with respect to each and every such rate the full out-of-pocket cost of the service and a requirement to that effect would defeat the power of the Commission to proceed in any case of this kind. The Court has time and time again upheld the validity of orders of the Commission and under Section 13(4) although there has been no such showing with respect to cost of the transportation service (see cases cited in paragraph III, *supra*).

With respect to the reasonableness of the interstate rates, as well as the reasonableness of the intrastate rates as increased, we have quoted above the Commission's definite finding upon this subject (Finding No. 3), amply supported by evidence to which reference is made in the report, and the "saving clause" with which the findings were accompanied.

The Commission also made the following finding as Finding No. 5:

> "5. That the Florida intrastate rates, charges, and minimum weights, which are below the level herein authorized, are abnormally low and are not contributing their fair share to the revenues required by respondents to enable them to render adequate and efficient service and to operate profitably, *and thereby accomplish the purpose of the Interstate Commerce Act, and as set forth in the national transportation policy declared by the Congress, to develop and preserve a national transportation system adequate to meet the needs of the commerce of the United States, of the postal service, and of the national defense;* and that the burden thus cast upon interstate commerce is undue to

the extent that these intrastate rates and charges are less than they would be on the basis herein approved." (Emphasis supplied.)

We submit that the Commission made all findings appropriate and necessary for the support of the order here complained of, and that such findings are adequately supported by evidence as fully summarized and reviewed in the Commission's report.

For the reasons stated, these intervening defendants-appellees move that the judgment of the court below in this cause be affirmed.

ATLANTIC COAST LINE RAILROAD COMPANY, ET. AL.,
Intervening Defendants-Appellees.

By

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September 26, 1951.

APPENDIX "A"

U. S. Code, Title 49, Section 13(2)(3)(4).

"(2) Said Commission shall, in like manner and with the same authority and powers, investigate any complaint forwarded by the railroad commissioner or railroad commission of any State or Territory at the request of such commissioner or commission, and the Interstate Commerce Commission shall have full authority and power at any time to institute an inquiry, on its own motion, in any case and as to any matter or thing concerning which a complaint is authorized to be made, to or before said Commission by any provision of this part, or concerning which any question may arise under any of the provisions of this part, or relating to the enforcement of any of the provisions of this part. And the said Commission shall have the same powers and authority to proceed with any inquiry instituted on its own motion as though it had been appealed to by complaint or petition under any of the provisions of this part, including the power to make and enforce any order or orders in the case, or relating to the matter or thing concerning which the inquiry is had excepting orders for the payment of money. No complaint shall at any time be dismissed because of the absence of direct damage to the complainant. Representatives of State commission sitting with the Commission, under the provisions of this section, in cases pending before the Commission, shall receive such allowances for travel and subsistence expense as the Commission shall provide.

"(3) Whenever in any investigation under the provisions of this part, or in any investigation instituted upon petition of the carrier concerned, which petition is hereby authorized to be filed, there shall be brought in issue any rate, fare, charge, classification, regulation, or practice, made or imposed by authority of any State, or initiated by the President during the period of Federal control, the Commission, before proceeding to

hear and dispose of such issue, shall cause the State or States interested to be notified of the proceeding. The Commission may confer with the authorities of any State having regulatory jurisdiction over the class of persons and corporations subject to this part or part III with respect to the relationship between rate structures and practices of carriers subject to the jurisdiction of such State bodies and of the Commission; and to that end is authorized and empowered, under rules to be prescribed by it, and which may be modified from time to time, to hold joint hearings with any such State regulating bodies on any matters wherein the Commission is empowered to act and where the rate-making authority of a State is or may be affected by the action taken by the Commission. The Commission is also authorized to avail itself of the cooperation, services, records, and facilities of such State authorities in the enforcement of any provision of this part of part III.

"(4) Whenever in any such investigation the Commission, after full hearing, finds that any such rate, fare, charge, classification, regulation, or practice causes any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce on the one hand and interstate or foreign commerce on the other hand, or any undue, unreasonable, or unjust discrimination against interstate or foreign commerce, which is hereby forbidden and declared to be unlawful, it shall prescribe the rate, fare, or charge, or the maximum or minimum, or maximum and minimum, thereafter to be charged, and the classification, regulation, or practice thereafter to be observed, in such manner as, in its judgment, will remove such advantage, preference, prejudice, or discrimination. Such rates, fares, charges, classifications, regulations, and practices shall be observed while in effect by the carriers parties to such proceeding affected thereby, the law of any State or the decision or order of any State authority to the contrary notwithstanding."

Section 15a(2).

"(2) In the exercise of its power to prescribe just and reasonable rates the Commission shall give due consideration, among other factors, to the effect of rates on the movement of traffic by the carrier or carriers for which the rates are prescribed; to the need, in the public interest, of adequate and efficient railway transportation service at the lowest cost consistent with the furnishing of such service; and to the need of revenues sufficient to enable the carriers, under honest, economical, and efficient management to provide such service."

National Transportation Policy

54 Stat. 899, 49 U.S.C. 4281 (1940).

"It is hereby declared to be the national transportation policy of the Congress to provide for fair and impartial regulation of all modes of transportation subject to the provisions of this Act, so administered as to recognize and preserve the inherent advantages of each; to promote safe, adequate, economical, and efficient service and foster sound economic conditions in transportation and among the several carriers; to encourage the establishment and maintenance of reasonable charges for transportation services, without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices; to cooperate with the several States and the duly authorized officials thereof; and to encourage fair wages and equitable working conditions; — all to the end of developing, coordinating, and preserving a national transportation system by water, highway, and rail, as well as other means, adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense. All of the provisions of this Act shall be administered and enforced with a view to carrying out the above declaration of policy."

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Supreme Court of the United States

OCTOBER TERM, 1951

NO. 444 9

WILBUR C. KING, JERRY W. CARTER, and RICHARD A. MACK, as and constituting the FLORIDA RAILROAD AND PUBLIC UTILITIES COMMISSION,
Appellants,

vs.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL.

Appeal from The United States District Court for the Northern District of Florida

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BRIEF FOR THE APPELLANTS

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BRIEF FOR THE APPELLANTS

Opinion Below

The opinion of the District Court for the Northern District of Florida, Tallahassee Division, (R. 132) is reported in 101 F. Supp. 941. However, a copy of said opinion has been printed as Appendix A to Appellants' Statement as to Jurisdiction.

Jurisdiction

The judgment of the District Court (R. 140) was entered on July 17, 1951. The jurisdiction of this Court is invoked under Title 28, United State Code, Sections 1253 and 2101(b). Probable jurisdiction was noted by this Court on January 2, 1952 (R. 824).

Questions Presented

1. When the common carrier railroads are making substantial profits from their freight service, may the Interstate Commerce Commission, in the exercise of its 13th Section powers under The Interstate Commerce Act, lawfully nullify state-prescribed freight rates and, in lieu thereof, impose excessive and unreasonably high rates upon intrastate shippers so as to enable the railroads to offset enormous losses sustained through the operation of their passenger service?

2. In the exercise of its 13th Section powers under The Interstate Commerce Act, can the Interstate Commerce Commission lawfully require a state to raise its intrastate freight rates to the interstate level when said Commission fails to find affirmatively:

(a) What contribution from intrastate traffic would constitute a fair proportion of the railroads' total income;

(b) What amount of revenue is required to enable the railroads to operate efficiently;

(c) That the state-prescribed intrastate rates are less than compensatory or insufficient to cover the full cost of service; and

(d) That the maintenance of the intrastate freight rates at the interstate level will be reasonable and is necessary to the operation of a nationally efficient and adequate transportation system?

Statutes Involved

Sections 13(3), 13(4) and 15a of The Interstate Commerce Act, (Title 49 USC 13(3), 13(4) and 15a). These statutes are printed in the Appendix to this brief.

Statement

This litigation concerns the power of the Interstate Commerce Commission to *nullify* state-prescribed intrastate freight rates and the sufficiency of the findings upon which the exercise of that power has been predicated.

The historical background to this litigation has been set forth accurately and in considerable detail by the Interstate Commerce Commission in its Report of May 4, 1950, 278 I.C.C. 41, (R. 80), and by the District Court in its opinion of June 29, 1951, 101 F. Supp. 941, (R. 132). It is believed that a general statement of the ultimate facts will be sufficient for the purpose of this brief.

In 1946 in Docket Ex Parte No. 162, reported in 266 I.C.C. 162, (R. 83), and again in 1948 in Docket Ex Parte No. 166, reported in 270 I.C.C. 403, (R. 84), the Interstate Commerce Commission authorized general increases in railroad freight rates of varying percentages in the different sections of the United States. In southern territory, which includes the State of Florida, the 1946 increases in interstate traffic were 20 percent and the 1948 increases were 25 percent, subject in each instance to certain maximum amounts on particular commodities and to specified flat increases on others. In 1947 the Florida Railroad and Public Utilities Commission authorized increases (R. 83) on Florida intrastate traffic similar to the 1946 interstate increases in southern territory, except that increases on pulpwood were limited to 9 percent and no increases were allowed on (a) logs moving to the mills, (b) wet phosphate moving from the washer to the drying plant, (c) wastewood moving to retort or recovery plant, and (d) sugar cane moving to the mills. In 1948 the Florida Commission dealt with applications of the rail lines for general increases similar to those authorized by

the Interstate Commerce Commission in its Ex Parte No. 166 proceeding and, whereas the Interstate Commerce Commission had authorized a 25 percent increase on interstate traffic in southern territory, the Florida Commission authorized a 20 percent general increase on Florida intrastate traffic (R. 84), with the following exceptions:

(1) No increases were allowed on protective services, wastewoods to Pensacola, Florida, sugar cane from the fields to the mill in Clewiston, Florida, or fertilizer and fertilizer materials;

(2) Increases on road aggregates were limited to 10 percent; and

(3) Increases on class rates and rates made in relation thereto were limited to 10.25 percent.

Thus, the Florida Commission granted the rail lines the same increases in intrastate freight rates as were granted by the Interstate Commerce Commission in Dockets Ex Parte 162 and 166, with the exception of 5 percent granted by the Interstate Commerce Commission in Ex Parte No. 166 and the commodity and class rate exceptions which we have previously enumerated in this statement.

On December 3, 1948 *seven* of the *fourteen* common carrier railroads operating within the State of Florida filed a petition with the Interstate Commerce Commission (R. 28) charging that, as the result of the refusal of the Florida Commission to grant the same increases in intrastate rates as the Interstate Commerce Commission had granted with respect to interstate rates, the Florida intrastate rates cause undue and unreasonable advantage, preference and prejudice as between persons and localities in intrastate commerce in Florida, on the

one hand, and interstate commerce, on the other hand, and undue, unreasonable, and unjust discrimination against interstate commerce. The petition also charged that the Florida rates deprive the rail lines of large amounts of revenue to which they are entitled and which it is necessary for them to have in order that they may furnish adequate and efficient transportation service, and that this loss in revenue results in an undue burden upon and a discrimination against interstate commerce and undue preference of intrastate commerce.

The Interstate Commerce Commission held a hearing on the petition of the railroads and at the close of said hearing the Florida Commission made a motion to dismiss the petition (R. 569) on the following grounds, among others, that:

(1) The evidence herein is insufficient to support a finding that Florida intrastate traffic is not contributing its fair and proportionate share of the revenue required to enable respondents (railroads) to render adequate and efficient transportation service;

(2) The evidence fails to show the rates complained of are abnormally low or less than reasonably compensatory or insufficient to cover the full cost of service;

(3) It affirmatively appears from the record herein that the respondents' financial distress, if any, is caused by enormous deficits in their passenger operations which they unlawfully seek to impose upon the shippers and receivers of freight; and

(4) There is no evidence in the record herein from which the Commission can find the amount of revenue required from Florida intrastate freight operations in order that said intrastate freight operations may con-

tribute their fair, just and proportionate share of the revenue requirements of the respondents.

On May 4, 1950 the Interstate Commerce Commission denied the Florida Commission's motion to dismiss (R. 121) and made the following findings (R. 118) upon which it subsequently predicated its order of July 25, 1950 (R. 129) nullifying the state-prescribed Florida intrastate rates:

"2. That the transportation conditions incident to the intrastate transportation of freight in Florida are not more favorable and such conditions in the Florida peninsular are somewhat less favorable than those (1) within southern territory and (2) between Florida and interstate points.

"3. That the present interstate freight rates and charges within Florida and between points in Florida and points in other States are just and reasonable, including those proposed within Florida in I. & S. No. 5646, to the extent above found just and reasonable; and that intrastate rates, charges, and minimum weights herein approved will not exceed a just and reasonable level.

"4. That there is active competition between localities engaged in interstate commerce between points in Florida and points in other Southern States, on the one hand, and localities engaged in intrastate commerce in Florida, on the other hand, and that this competition extends for all practical purposes throughout the entire State of Florida and to class and commodity traffic generally, but not including sugar cane to the mill, molasses, and, for short hauls, mixed fertilizer and a few other commodities.

"5. That the Florida intrastate rates, charges, and minimum weights, which are below the level herein authorized, are abnormally low and are not contributing

their fair share to the revenues required by respondents to enable them to render adequate and efficient service and to operate profitably, and thereby accomplish the purpose of the Interstate Commerce Act, and as set forth in the national transportation policy declared by the Congress, to develop and preserve a national transportation system adequate to meet the needs of the commerce of the United States, of the postal service, and of the national defense; and that the burden thus cast upon interstate commerce is undue to the extent that these intrastate rates and charges are less than they would be on the basis herein approved.

"6. That the establishment of intrastate rates and charges increased sufficiently to equal the level herein approved will substantially increase respondents' revenues therefrom, and will constitute not more than a fair proportion of respondents' total income, not taking into consideration the Ex Parte 168 increases.

"7. That the maintenance of intrastate rates and charges within Florida on bases lower than those herein approved causes, and in the future will cause, (1) in all instances, unjust discrimination against interstate commerce, (2) in nearly all instances, undue preference of and advantage to localities in intrastate commerce, and undue prejudice to localities in interstate commerce; and (3) undue and unreasonable advantage and preference to intrastate shippers of cement, particularly those at Tampa, Fla., and undue prejudice to interstate shippers, especially those at Clinchfield, Ga.

"8. That this unjust discrimination and undue prejudice should be removed by establishing intrastate rates and charges between points in Florida which will reflect the same increases as are, and for the future may be, maintained by respondents on like interstate traffic to and from Florida, and within Florida under our authorizations in Ex Parte No. 162 and Ex Parte No. 166,

modified as herein indicated and as proposed before the Florida Commission in proceedings referred to herein: provided, that, under these findings, (1) on sugar cane, the present Florida intrastate transit rates should be increased to reflect the Ex Parte 162 and Ex Parte 166 increases but the minimum weights thereon should be the same as the minima authorized in I. & S. No. 5646, and the present high unused Florida intrastate non-transit rates should not be increased, except as necessary to observe as a minimum the Florida intrastate transit rates increased as herein authorized; (2) that on wastewood, the increased intrastate rates, minimum 40,000 pounds, authorized herein, shall alternate with intrastate rates, minimum 60,000 pounds, which latter rates shall not exceed the interstate rates, minimum 60,000 pounds applicable, from August 21, 1948, to, but not including, January 11, 1949, the effective date of the initial interim increases authorized in Ex Parte No. 168, for corresponding distances from Coast Line stations in Florida to Brunswick, Ga.; (3) that on pulpwood, no increase shall be made in Florida joint-line charges nor in Florida single-line distance rates which would cause those rates or charges to exceed the level of the corresponding rates contemporaneously maintained in interstate traffic during the foregoing period from or to Florida points under the Roanoke Rapids scale; (4) that on fertilizers and fertilizer materials, no increase shall be made in Florida single-line intrastate rates which will cause such rates to exceed the level of the single-line intrastate rates maintained by the Florida East Coast Railway immediately prior to January 11, 1949, the effective date of the initial interim increases authorized in Ex Parte No. 168; (5) that no intrastate rate or charge shall be increased so that it will exceed the lowest level of the corresponding rates or charges contemporaneously maintained generally on interstate traffic to and from Florida points in the period from August 21, 1948, to, but not including, January 11, 1949; and (6) that the foregoing provisions shall be construed so as to make due allowance for dif-

ferences in minimum weights and for the Florida peninsular arbitraries where applicable."

On September 16, 1951 the Florida Commission filed a civil action (R. 1) against The United States of America in the District Court for the Northern District of Florida under Title 28 USC Section 1336, and others, seeking to permanently enjoin, set aside and annul the order of the Interstate Commerce Commission dated July 25, 1950. Two short-line railroads, the Florida Citrus Commission, the Growers and Shippers League of Florida and numerous shippers intervened in support of the Florida Commission (R. 133). The Interstate Commerce Commission and all Class I railroads operating in Florida intervened as parties defendant (R. 133).

The District Court sustained the order of the Interstate Commerce Commission (R. 139) and as the basis for its action stated that (R. 136):

"The respective parties to this suit appear to be in accord on the proposition that the Interstate Commerce Commission heard and determined Ex Parte #162 and #166 primarily as revenue cases. They also appear to be in accord that the carriers are making substantial profits out of their over-all freight services and that, considered alone, increases in freight rates would not have been justified on the ground that the carriers needed additional revenue to pay the costs of rendering freight services and a fair return on the carriers' property devoted to such services. The parties are further in accord that the carriers are sustaining heavy losses resulting from passenger operations. Moreover, the evidence before the Interstate Commerce Commission in this case clearly establishes these facts. We conclude from this evidence that the increases in rates authorized

by the Interstate Commerce Commission, in Docket #30140, were authorized chiefly because of losses resulting from passenger operations. Increased labor costs accounted for some increased expenses of the carriers, but the principal losses being incurred arose out of passenger operations.

"The question, therefore, before the court is — may the Interstate Commerce Commission increase freight rates generally to enable the carriers to meet deficits incurred from passenger operations?

"Plaintiffs contend this may not be done; that every branch of the service must contribute its proper share of the costs of operation and return on the property devoted to each class of service. They rely upon the 5% Case, 31 I. C. C. 351, Northern Pacific Railway v. North Dakota, 236 U. S. 585, Norfolk & Western Railway v. West Virginia, 336 U. S. 605, and other cases to the same effect.

"The cases relied upon by plaintiffs to support this proposition were decided prior to 1940 when the Interstate Commerce Act was amended by including therein the National Transportation Policy, which the Interstate Commerce Commission was directed to follow in prescribing rates and charges on all modes of transportation subject to the provisions of the Act, 49 U. S. C. 4281. In Railroad Commission v. Chicago, B. & Q. Railroad Company, 257 U. S. 563 and again in Florida v. U. S. 292 U. S. 1, the Supreme Court of the United States held that the Transportation Act, 1920, imposed an affirmative duty on the Interstate Commerce Commission 'to fix rates and to take other important steps to maintain an adequate railway service for the people of the United States.' And, again in North Carolina v. United States, 325 U. S. 507, the Supreme Court re-affirmed these earlier holdings and held that where intrastate traffic was not contributing its fair share of the rev-

enue required to enable the carriers to render adequate and efficient transportation service an order of the Interstate Commerce Commission directing an increase in intrastate rates, for such purpose, would be valid, if supported by evidence justifying the order.

"Relying upon these decisions of the Supreme Court of the United States, this court finds and holds that the Interstate Commerce Commission, in this case, had the authority to enter the order here questioned for the purpose of providing the carriers with needed revenue, even though freight rates were increased beyond the point where such rates provided more revenue than was required to pay the costs for rendering freight services and a fair return on carriers' property devoted to such services.

"Plaintiffs contend that should the court find that the Interstate Commerce Commission is vested with authority to increase freight rates, generally, to enable the carriers to meet deficits from passenger operations, nevertheless, the order of the Interstate Commerce Commission, in this case, does not comply with all the requirements laid down by the Supreme Court of the United States in North Carolina v. United States, supra. We think it does.

"While it is doubtful if the order of the Interstate Commerce Commission, in Docket #30140, could be sustained, on the grounds that the action of the Florida Commission resulted in undue and unreasonable advantages, preference or prejudice, as between persons and localities, in intrastate commerce in Florida on the one hand and interstate commerce on the other (Florida v. U. S., 282 U. S. 194), yet, it is clear from the evidence in the case that it did result in undue, unreasonable and unjust discrimination against interstate commerce and undue preference as to intrastate commerce, in violation of Section 13(4) of the Interstate Commerce Act, in that it failed to place upon intrastate commerce the burden cast upon such com-

merce, by the order of the Interstate Commerce Commission, entered in Ex Parte #162 and #166, which was intended to provide needed revenue from both intrastate and interstate commerce, to meet the money requirements of the carriers."

From the final judgment of the District Court sustaining the order of the Interstate Commerce Commission, this appeal has been taken.

Summary of Argument

A. *Freight Rates May Not Be Increased To Meet Deficits Incurred From Passenger Operations.* It is the contention of appellants that Florida intrastate freight traffic under state-prescribed rates was contributing its fair share toward the maintenance of an adequate national transportation system, that were it not for carriers' passenger deficits there would have been no reason for the railroads to request further increases in their revenues, and that the Interstate Commerce Commission unlawfully required the Florida rates to be raised above a reasonable level.

There is no disagreement concerning the consideration given passenger deficits in this case. The District Court recognized (R. 136) that the Interstate Commerce Commission required the Florida rates to be increased chiefly because of losses resulting from passenger operations and held that this could be done (R. 137) even though freight rates thus were increased beyond the point where such rates would provide more revenue than would be required to pay the costs of rendering freight services and give the carriers a fair return on their property devoted to such services. We contend that rates which will produce such results exceed a reasonable level and are unlawful.

Florida's position with reference to the use of passenger deficits to justify freight rate increases is identical with that formerly held by the Interstate Commerce Commission itself when in the *Five Percent Case, 31, I.C.C. 351,* it announced that:

> "We know of no provision of law under which we should be justified in increasing freight rates to provide a return upon property used exclusively in the passenger service, much less to take care of losses incurred in such service."

The Interstate Commerce Commission has subsequently departed from the sound position announced by it in the *Five Percent Case* and has now arrived at the conclusion (R. 112) that it feels "compelled in a general rate case to take the passenger deficit into account in adjustment of freight rates and charges." In explanation of its present position the Commission has said that "Naturally, this course is borne out of the exigencies of the industry, and leaves us free for subsequent examination of the question when particularized by complaint or in an investigation of our own." The "exigencies of the industry," we maintain, are not sufficient to justify the exercise of an unauthorized power.

In *Norfolk & Western Ry. Co., vs. West Virginia, 236 U.S. 605,* this Court, in striking down a West Virginia statute which provided for unreasonably low passenger fares, recognized and applied the same principle for which we are contending here when it said:

> "The passenger traffic is one of the main departments of the company's business; it has its separate equipment, its separate organization and management, and, of necessity, its own rates. In making a reasonable

adjustment of the carrier's charges, the state is under no obligation to secure the same rate of return from each of the two principal departments of business, passenger and freight; but the state may not select either of these departments for arbitrary control. Thus, it would not be contended that the state might require passengers to be carried for nothing, or that it could justify such action by placing upon the shippers of goods the burden of excessive charges in order to supply an adequate return for the carrier's entire service."

More recently, this court in the North Carolina passenger fare case, *North Carolina vs. United States, 325 U. S. 507*, held that:

"The power of the Commission to require states to raise their intrastate rates depends upon whether intrastate traffic is contributing its fair share of the earnings required to meet maintenance costs and to yield a fair return on the value of property devoted to the transportation service, both interstate and intrastate. . . . *But the Commission cannot require intrastate rates to be raised above a reasonable level.*" (Emphasis supplied by us)

The District Court (R. 136) called attention to the fact that the cases relied upon by the Florida Commission (The Five Percent Case and the West Virginia Case) were decided prior to 1940 when the Interstate Commerce Act was amended by including therein the National Transportation Policy which now controls the fixing of rates and charges for all modes of transportation subject to the Act. But, we submit the National Transportation Policy cannot be construed so as to justify or condone the imposition of excessive and unreasonably high freight rates upon intrastate shippers of goods so that carriers

may be able to offset or recoup losses sustained through the operation of passenger service.

B. *Findings Essential To Validity of Order Nullifying State-Prescribed Rates.* This Court has held many times that the Interstate Commerce Commission is without authority to supplant a state-prescribed intrastate rate unless there are clear findings, supported by evidence, of each element essential to the exercise of that power by the Commission. We contend that the Interstate Commerce Commission has failed to make those essential findings in this case.

In the North Carolina passenger fare case, *North Carolina vs. United States*, decided on June 11, 1945, and reported in *325 U.S. 507*, this Court, in holding that the order of the Interstate Commerce Commission was not based on adequate findings supported by evidence, pointed out that the Commission made no findings as to what contribution from intrastate traffic would constitute a fair proportion of the railroads' total income; that the Commission made no findings as to what amount of revenue was required to enable those railroads to operate efficiently; that the Commission did not find that the railroad rates involved there were less than compensatory or insufficient to cover the full cost of service; that the Commission did not find that the maintenance of those rates was necessary to the operation of a nationally efficient and adequate transportation system; and that the Commission made no findings as to the reasonableness of the proposed rates.

Virtually the same infirmities are to be found in the order of the Interstate Commerce Commission in the present case. Clear findings of the various elements which

this Court has said are essential have not been made and cannot be made in this case because there is no evidence in the record to support them. There is nothing here but a disparity in rates and that is not enough to justify the Interstate Commerce Commission in nullifying state-prescribed intrastate rates.

Argument

I.

Freight Rates May Not Be Increased To Meet Deficits Incurred From Passenger Operations

The Interstate Commerce Commission has required Florida intrastate freight rates to be raised to the interstate level because of the enormous deficits sustained by the railroads from the operation of their passenger service. Florida intrastate freight traffic was already contributing, under state-prescribed rates, more than its fair share of the total income of the carriers.

There is no disagreement concerning the impact these passenger deficits have had upon the freight rates in question. The opinion of the District Court specifically states that the respective parties to this litigation (R. 136):

> ". . . appear to be in accord that the carriers are making substantial profits out of their over-all freight services and that, considered alone, increases in freight rates would not have been justified on the ground that the carriers needed additional revenue to pay the costs of rendering freight services and a fair return on the carriers' property devoted to such services. The parties are further in accord that the carriers are sustaining heavy losses resulting from passenger operations. Moreover, the evidence before

> the Interstate Commerce Commission in this case clearly establishes these facts. We conclude from this evidence that the increases in rates authorized by the Interstate Commerce Commission, in Docket No. 30140, were authorized chiefly because of losses resulting from passenger operations."

The District Court, after recognizing that Florida's intrastate freight rates have been increased by the Interstate Commerce Commission because of carriers' passenger deficits, then reached this alarming conclusion (R. 137):

> ". . . this court finds and holds that the Interstate Commerce Commission, in this case, had the authority to enter the order here questioned for the purpose of providing the carriers with needed revenue, even though freight rates were increased beyond the point where such rates provided more revenue than was required to pay the costs for rendering freight services and a fair return on carriers' property devoted to such services."

Thus it is, that this litigation grows out of a unique proceeding—a 13th Section proceeding to increase state-prescribed intrastate freight rates not because they are too low, *but because losses from passenger operations are too high!* This is apparent when consideration is given to the fact that for the year 1948, the last full year's operations involved in this litigation, the three major railroads operating in Florida had a *net railway operating income* of only TWENTY MILLION DOLLARS, while for the same year their *net railway operating income* FROM FREIGHT SERVICE ALONE was FORTY-ONE MILLION DOLLARS. Their system deficit from passenger service for that year was TWENTY-ONE MILLION DOLLARS. In other words, more than fifty

cents out of every dollar net railway operating income earned by these railroads from their freight services goes toward the payment of their passenger losses.

The Florida Commission's position on this question is *identical* with that formerly held by the Interstate Commerce Commission itself when in the *Five Percent Case, 31 I.C.C. 351*, it announced the sound conclusion that:

> "We know of no provision of law under which we should be justified in increasing freight rates to provide a return upon property used exclusively in the passenger service, much less to take care of losses incurred in such service. In our opinion each branch of the service should contribute its proper share of the cost of operation and of return upon the property devoted to the use of the public."

Insofar as state prescribed rates are concerned, the foregoing construction by the Interstate Commerce Commission is in consonance with two decisions of this Court, one involving the freight rates on lignite and the other passenger fares.

In *Northern Pac. Ry. v. North Dakota, 236 U. S. 585*, decided March 8, 1915, this Court found that a statute of North Dakota prescribing a distance scale of rates on lignite compelled the railroads to transport coal for less than the proper cost of transportation, or virtually at cost, and thus the carriers were denied a reasonable reward for their services in violation of the due process clause of the Fourteenth Amendment.

The Court said at pages 597 and 598:

> "The State cannot estimate the cost of carrying coal by throwing the expense incident to the maintenance

of the roadbed, and the general expenses, upon the carriage of wheat; or the cost of carrying wheat by throwing the burden of the upkeep of the property upon coal and other commodities. This, of course, does not mean that all commodities are to be treated as carried at the same rate of expense. The outlays that exclusively pertain to a given class of traffic must be assigned to that class, and the other expenses must be fairly apportioned. It may be difficult to make such an apportionment, but when conclusions are based on cost the entire cost must be taken into account. * * *

"It does not aid the argument to urge that the State may permit the carrier to make good its loss by charges for other transportation. If other rates are exorbitant, they may be reduced. Certainly, it could not be said that the carrier may be required to charge excessive rates to some in order that others might be served at a rate unreasonably low. That would be arbitrary action."

Simultaneously, in *Norfolk & W. Ry. Co. v. West Virginia, 236 U. S. 605*, this Court found that a statute of West Virginia providing for a passenger fare of 2 cents per mile, afforded such a narrow, if any, margin over the cost of the service that the railroad was forced to carry passengers, if not at or below cost, with merely a nominal reward. The law was held to be invalid because in violation of the due process clause of the Fourteenth Amendment. The Court said at page 609:

"The passenger traffic is one of the main departments of the company's business; it has its separate equipment, its separate organization and management, and, of necessity, its own rates. In making a reasonable adjustment of the carrier's charges, the state is under no obligation to secure the same rate

> of return from each of the two principal departments of business, passenger and freight; but the state may not select either of these departments for arbitrary control. Thus, it would not be contended that the state might require passengers to be carried for nothing, or that it could justify such action by placing upon the shippers of goods the burden of excessive charges in order to supply an adequate return for the carrier's entire service."

These two decisions of this Court stand for the proposition that a state cannot justify excessively low passenger fares by placing upon the shippers of goods the burden of excessive charges in order to supply an adequate return for the carriers' entire service. Neither of these decisions has ever been reversed, overruled or modified in any respect, either directly or by implication. As a matter of fact, they have been cited with approval for one reason or another by this Court, the Circuit Courts of Appeal and the Federal District Courts in more than a score of cases. The last reference to either of them by this Court appears to have been in the case of *New York vs. United States,* decided in 1947 and reported in 331 U. S. 338, and the reference there contained the clear inference that for constitutional reasons each form of transport service must stand on its own bottom. Likewise, these two cases have been followed by the supreme courts of more than twenty-four different states. In the majority of instances they have been brought to the attention of the courts by the railroads themselves as the controlling law.

Since its decision in the *Five Percent Case,* the Commission has departed from the sound position announced in that case that freight rates cannot be increased to provide a return upon property used exclusively in the

passenger service. Subsequent decisions of the commission have finally arrived at the conclusion that it feels "compelled in a *general rate case* to take the passenger deficit into account in adjustment of freight rates and charges".

In its most recent expression on this vital matter and partly in explanation of its position the Commission has said that "Naturally, this course is borne out of the exigencies of the industry, and leaves us free for subsequent examination of the question when particularized by complaint or in an investigation of our own".

Taking into consideration the long and extended history of passenger deficits of the railroads, we are wondering how long this rather normal situation can be treated as an emergency or as the Commission puts it "the exigencies of the industry". It seems to us that some solution should be sought which would not *penalize the freight shippers.*

Under the decisions of this Court, the State of Florida, in fixing intrastate rates, cannot impose upon the shippers of goods the burden of excessive freight rates in order to compensate for the carriers' passenger deficits. The Supreme Court of Florida has so held on more than one occasion. Likewise, we submit that when dealing with intrastate rates, the Interstate Commerce Commission cannot ignore the decisions of the United States Supreme Court in the Northern Pacific and the Norfolk & Western cases.

Granting for the sake of argument that there may be some justification for assessing passenger deficits against freight traffic in a general revenue case of national scope

involving exclusively interstate operations, there would appear to be no justification for similar treatment when dealing exclusively with intrastate freight rates. Modern day passenger service is predominantly interstate in character while intrastate passenger service is comparatively negligible. This is true not only with reference to the transportation of passengers but likewise the transportation of goods in passenger trains commonly referred to as the head-end services. For example, there is no intrastate transportation of milk in Florida. Most mail moves in interstate commerce. Intrastate express service is a minor function of the overall operations of that agency which is controlled by the rail lines. And yet, these head-end services are responsible for a substantial part of the so-called passenger deficits. *Increased Freight Rates, 1948, 276 ICC 9, 37.* By far the largest proportion of the deficit from these services then must of necessity stem from interstate operations and, if considered at all in an intrastate freight rate case, should serve to reduce the contribution which intrastate traffic should make to the carriers' total income rather than constitute the primary basis for requiring state-prescribed intrastate freight rates to be increased above a reasonable level.

We have made the statement more than once in this brief that Florida intrastate freight rates were contributing more than their fair share of the carriers' total income. We have also said that the Interstate Commerce Commission required the Florida rates to be raised above a reasonable level. The truth of these statements is apparent when one considers the earnings of the railroads operating within the State of Florida. The Florida East Coast Railway, which operates wholly within the State

of Florida, earned a return of 12.35% from its freight service in 1948 (R. 771, Exhibit 67) the last full year involved in this case. It is a commonly accepted fact that The Seaboard Air Line and The Atlantic Coast Line are more profitable rail lines than the Florida East Coast and while the record does not show a breakdown of the operations of these two lines the conclusion is inescapable that each of these lines had a higher return from freight operations than the Florida East Coast. Freight rates which produce such high returns are exhorbitant and unreasonable.

In the North Carolina passenger fare case, this Court said that the power of the Interstate Commerce Commission with reference to intrastate rates is dominant only so far as necessary to alter *rates which injuriously affect interstate transportation.* Can rates which produce a return in excess of 12% be said to injuriously affect interstate transportation? Certainly not, and no such charge can be successfully maintained against Florida intrastate freight rates. Freight rates cannot be said to injuriously affect interstate transportation just because passenger earnings are too low.

There is little, if any, regulation of interstate passenger service. That is, no regulatory agency undertakes to determine *how much* passenger service the rail lines shall provide. The states, in most instances, exert some control over intrastate passenger service in that such service may not be withdrawn or curtailed without the consent of the state. However, in this phase of their regulatory functions the states are met with a most frustrating device on the part of the railroads. Frequently a railroad will seek to curtail some part of the meager intrastate passenger service it renders within a given state.

In most such instances the state regulatory agency attempts to take into consideration the overall earnings of the particular branch or line from which the passenger service is sought to be withdrawn. Immediately the railroads take the position that this cannot be done, THAT EARNINGS FROM FREIGHT SERVICE CANNOT BE TAKEN INTO CONSIDERATION IN DETERMINING WHETHER PASSENGER SERVICE SHOULD BE CURTAILED, *A.C.L.R. Co. vs. Fla. RR. & PU. Com., 96 F. Supp. 583, 586.* The railroads are quick to use the passenger deficits to justify increases in freight rates and, then, having secured the higher freight rates, they use the same passenger deficits to justify curtailing the passenger service. The result is that the public is being deprived in many instances of that service which has already been subsidized by the shippers of freight through excessive and unreasonable freight rates.

While we recognize that it may not be easy to say that intrastate freight rates cannot be increased to take care of passenger deficits, and that such a decision will pose serious problems for the railroads, nevertheless, this problem of passenger deficits will never be solved so long as the railroads are permitted to incur these deficits without limitation and then pass them on to the shippers of freight through the application of exhorbitant and unreasonable freight rates.

There is nothing in the Interstate Commerce Act which justifies the action of the Interstate Commerce Commission in requiring state-prescribed intrastate freight rates in Florida to be raised to the interstate level in order that the rail lines may be able to offset losses incurred in their passenger operations. Such unwarranted action violates the letter and the spirit of the National Trans-

portation Policy and ought to be condemned by this Court.

It is the National Transportation Policy, among other things, to promote economical service, to encourage the maintenance of reasonable charges for transportation services, without unjust discriminations, and to cooperate with the states and the duly authorized officials thereof, all to the end of developing and preserving a national transportation system adequate to meet the needs of commerce, of the Postal Service, and of the national defense. The imposition of exhorbitant and unreasonable freight rates to take care of passenger deficits is contrary to these express purposes of the Interstate Commerce Act. There can be no justification for selecting one class of citizens, the shippers of freight, and imposing upon them the burden of maintaining an adequate transportation system for the nation as a whole particularly when they are already contributing more than their fair share to the revenues required for the maintenance of such a transportation system. The continued practice of permitting the railroads to recover passenger deficits by the simple expedient of increasing freight rates not only fails to promote economical transportation service but completely removes the necessity of finding a solution to the problem of passenger deficits.

Florida intrastate freight traffic, already contributing more than its fair share of the railroads' total income, has been required unlawfully by the Interstate Commerce Commission to bear the additional burden of reimbursing the railroads for losses sustained through the operation of passenger trains. The order of the Interstate Commerce Commission which so clearly violates the letter

and spirit of the National Transportation Policy should have been vacated by the District Court.

II.

Findings Essential to Validity of Order Nullifying State-Prescribed Rates.

This Court has held many times that the Interstate Commerce Commission is without authority to supplant a state-prescribed rate unless there are clear findings, supported by evidence, of each element essential to the exercise of that power by the Commission. We contend that the Interstate Commerce Commission has failed to make those essential findings in this case.

It appears to be definitely settled by a recent decision of this Court, *North Carolina vs. United States*, decided on June 11, 1945, and reported in *325 U. S. 507, 89 L. Ed. 1760*, that the power of the Interstate Commerce Commission to require states to raise their intrastate rates depends upon whether intrastate traffic is *contributing its fair share* of the earnings required to meet maintenance and operating costs and to yield a fair return on the value of the property directed to the transportation service, both interstate and intrastate.

In the North Carolina Case this Court said that:

"Section 13(4) does not relate to the Commission's power to regulate interstate transportation as such. As to interstate regulation, the Commission is granted the broadest powers to prescribe rates and other transportation details. See *United States v. Pennsylvania R. Co. Nos. 47, 48, decided January 29, 1945 (323 US 612, ante, 499, 65 S Ct 471)*. No such breadth of authority is granted to the Commission over

purely intrastate rates. Neither § 13 (4), nor any other congressional legislation, indicates a purpose to attempt wholly to deprive the states of their primary authority to regulate intra-state rates. Since the enactment of § 13 (4), as before its enactment, a state's power over intra-state rates is exclusive up to the point where its action would bring about the prejudice or discrimination prohibited by that section. When this point—not always easy to mark—is reached, and not until then, can the Interstate Commerce Commission nullify a state-prescribed rate.

The Court then said:

"Before the Commission can nullify a state rate, justification for the 'exercise of the federal power must clearly appear.' *Florida v. United States, 282 US 194, 211, 212, 75 L ed 291, 301, 302, 51 S Ct* 119. *See also Yonkers v. United States, 320 US 685, 88 L ed 400, 64 S Ct 327.* And the intention to interfere with the state's rate-making function is not to be presumed. *Arkansas R. Commission v. Chicago, R. I. & P. R. Co. 274 US 597, 603, 71 L ed 1224, 1228, 47 S Ct 724;* nor must its intention in this respect be left in serious doubt. *Illinois Commerce Commission v. Thomson, 318 US 675, 684, 685, 87 L ed 1075, 1081, 1082, 63 S Ct 834.* The foregoing cases also stand for the principle that the Interstate Commerce Commission is without authority to supplant a state-prescribed intra-state rate unless there are clear findings, supported by evidence, of each element essential to the exercise of that power by the Commission."

In discussing those elements which are *essential* to the exercise of the Commission's power under Section 13 of the National Transportation Act, this Court went on to say (page 515):

"Neither in its formal findings, nor in its discussion of the facts, did the Commission indicate that the North Carolina railroad rates here involved were less than compensatory or insufficient to cover the full cost of service. Nor did they find that maintenance of these rates was necessary to the operation of a nationally efficient and adequate railway system. . . .

". . . The Commission made no findings as to what contribution from intra-state traffic would constitute a fair proportion of the railroad's total income. It made no finding as to what amount of revenue was required to enable these railroads to operate efficiently. Instead, it relied on the mere existence of a disparity between what it said was a reasonable interstate rate and the intra-state rate fixed by North Carolina. . . .

". . . The purpose of the National Transportation Law is to assure railroads a fair net operating income and no more. . . . The power of the Commission to require states to raise their intra-state rates depends upon whether intra-state traffic is contributing its fair share of the earnings required to meet maintenance and operating costs and to yield a fair return on the value of property directed to the transportation service, both interstate and intra-state. . . . But the Commission cannot require intra-state rates to be raised above a reasonable level."

In concluding its opinion in the North Carolina case this Court said that:

"Without such findings supported by evidence, the Commission was not authorized to find that the intra-state rates discriminated against interstate commerce."

What contribution from intrastate traffic would constitute a *fair proportion* of the railroads' total income in the present case? How are you to determine what a *fair contribution* is? *What contribution* is Florida intrastate traffic now making to the railroads' total income? We believe that we are entitled to an answer to these questions under the controlling decisions of this Court before our intrastate freight rates are increased by order of the Interstate Commerce Commission; and yet it is wholly impossible to ascertain the answers to those questions from this record.

How can the Interstate Commerce Commission make such a finding in a case such as this where there has been no separation of interstate and intrastate operations, revenues, expenses and investments? Certainly in the present case there is not one scintilla of evidence from which the Commission or the Court can find *what contribution* from intrastate traffic in Florida would *constitute a fair proportion* of the railroads' total income. As pointed out by the Court in the North Carolina case the Interstate Commerce Commission is without authority to supplant a state prescribed intrastate rate unless there are clear findings, *supported by evidence*, of each element *essential* to the exercise of that power by the Commission.

The formal finding by the Interstate Commerce Commission that (R. 119) the Florida intrastate rates were not contributing their fair share to the revenues required by the railroads to enable them to render adequate and efficient service and to operate profitably is an unwarranted conclusion, contrary to the evidence in this record, and supported only by a disparity in the interstate and

the intrastate rates. The Commission made no effort to determine what Florida's contribution was under the state-prescribed rates. Neither did the Commission make any effort to determine what Florida's contribution should be. All that the Commission did was to assume that Florida's contribution prior to the interstate increases was a valid criterion of fairness (R. 112). The Commission then reasoned that after the interstate rates were increased approximately 45% in the two cases, Ex Parte 162 and 166, and the intrastate rates were correspondingly increased only about 40%, Florida's contribution then became smaller and therefore constituted less than her fair share of the railroads' revenue requirements. This was a feeble and, we submit, abortive attempt on the part of the Interstate Commerce Commission to comply with the decisions of this Court that there must be a clear finding, supported by evidence, of what contribution from intrastate traffic will constitute a fair proportion of the railroads' total income. Stripped of its sophistry the Commission's finding is simply that there is a disparity in the interstate and the intrastate rates and because of that disparity Florida's intrastate traffic is not contributing its fair share of the railroads' revenue requirements. But, the mere existence of a disparity between rates on intrastate and interstate traffic does not warrant the Commission in prescribing intrastate rates. *Florida v. United States, 282 US 194, 211, 212.*

In the North Carolina passenger fare case, this Court, in holding that the order of the Interstate Commerce Commission was not based on adequate findings supported by evidence, pointed out that the Commission made *no findings as to what contribution* from intrastate traffic

would constitute a *fair proportion* of the railroads' total income; that the Commission made *no findings* as to *what amount* of revenue was required to enable those railroads to operate efficiently; that the Commission *did not find* that the railroad rates involved there were less than compensatory or insufficient to cover the full cost of service; that the Commission *did not find* that maintenance of those rates was necessary to the operation of a nationally efficient and adequate transportation system; and that the Commission made *no findings* as to the reasonableness of the proposed rates.

We submit that these are essential findings in a case of this kind and that they have not been made and cannot be made in the present case because there is no evidence in the record to support them. Without such findings supported by evidence, the Commission was not authorized to find that Florida's intrastate freight rates discriminated against interstate commerce. The Commission's finding that the Florida intrastate rates resulted in undue and unreasonable advantage, preference and prejudice, in nearly all instances, as between persons and localities in intrastate commerce in Florida on the one hand and interstate commerce on the other, was not sustained by the District Court. On the contrary, the Court pointed out (R. 137) that it is doubtful that the order could be sustained on those grounds. Certainly, a general sweeping order against all intrastate rates may not be predicated upon the Commission's findings of discrimination against particular persons and locations. *Railroad Commission v. Chicago B. & O. R. Co., 257 US 563.* The court did sustain the Commission's finding that the Florida intrastate rates caused undue discrimination against interstate commerce; however, as we have

attempted to point out, this ultimate conclusion was not predicated upon clear findings of those elements which this Court has held are essential to the validity of the Commission's order.

III.
Conclusion

When the Interstate Commerce Commission required the Florida intrastate freight rates to be raised to the interstate level in order that the railroads might be able to recoup losses sustained in their passenger operations it acted without lawful authority because:

1. Losses incurred from passenger services are not a proper burden to be placed upon the shippers of goods;

2. Florida's intrastate freight traffic was already contributing more than its fair share of the railroads' total income;

3. The resulting intrastate freight rates are exorbitant and excessively high and the Commission cannot require state-prescribed intrastate rates to be raised above a reasonable level;

4. The Commission failed to make clear findings, supported by evidence, of each element essential to the validity of such an order;

5. The Commission made no specific findings as to what amount of revenue was required to enable the railroads to operate efficiently; and

6. The Commission made no specific findings as to what contribution from Florida intrastate traffic would constitute a fair proportion of the railroads' total income.

Because the Commission acted without lawful authority in assessing passenger deficits against freight shippers, and because the Commission's order was not based on adequate findings, supported by evidence, the District Court should have declined to enforce its order. The judgment of the District Court, therefore, should be reversed.

Respectfully submitted,

.....

LEWIS W. PETTEWAY,
Counsel for Appellants.

APPENDIX

Section 13 (3)

"Whenever in any investigation under the provisions of this part, or in any investigation instituted upon petition of the carrier concerned, which petition is hereby authorized to be filed, there shall be brought in issue any rate, fare, charge, classification, regulation, or practice, made or imposed by authority of any State, or initiated by the President during the period of Federal control, the Commission, before proceeding to hear and dispose of such issue, shall cause the State or States interested to be notified of the proceeding. The Commission may confer with the authorities of any State having regulatory jurisdiction over the class of persons and corporations subject to this part or part III with respect to the relationship between rate structures and practices of carriers subject to the jurisdiction of such State bodies and of the Commission; and to that end is authorized and empowered, under rules to be prescribed by it, and which may be modified from time to time, to hold joint hearings with any such State regulating bodies on any matters wherein the Commission is empowered to act and where the rate-making authority of a State is or may be affected by the action taken by the Commission. The Commission is also authorized to avail itself of the cooperation, services, records, and facilities of such State authorities in the enforcement of any provision of this part or part III."

Section 13 (4)

"Whenever in any such investigation the Commission, after full hearing, finds that any such rate, fare, charge, classification, regulation, or practice causes any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce on the one hand and interstate or foreign commerce on the other hand, or any undue, unreasonable, or unjust discrimination against interstate or foreign commerce, which

is hereby forbidden and declared to be unlawful, it shall prescribe the rate, fare, or charge, or the maximum or minimum, or maximum and minimum, thereafter to be charged, and the classification, regulation, or practice thereafter to be observed, in such manner as, in its judgment, will remove such advantage, preference, prejudice, or discrimination. Such rates, fares, charges, classifications, regulations and practices shall be observed while in effect by the carriers parties to such proceeding affected thereby, the law of any State or the decision or order of any State authority to the contrary notwithstanding."

Section 15a

"In the exercise of its power to prescribe just and reasonable rates the Commission shall give due consideration, among other factors, to the effect of rates on the movement of traffic by the carrier or carriers for which the rates are prescribed; to the need, in the public interest, of adequate and efficient railway transportation service at the lowest cost consistent with the furnishing of such service; and to the need of revenues sufficient to enable the carriers, under honest, economical, and efficient management to provide such service."

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing brief upon all parties of record in this proceeding, by mailing a copy thereof properly addressed to each such party as required by the Rules of Practice.

Dated at Tallahassee, Florida, this ..... day of September, 1952.

LEWIS W. PETTEWAY, of Counsel.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952

No. 9

WILBUR C. KING, JERRY W. CARTER AND RICHARD A. MACK, AS AND CONSTITUTING THE FLORIDA RAILROAD AND PUBLIC UTILITIES COMMISSION,

Appellants

vs.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ATLANTIC COAST LINE RAILROAD COMPANY, ET AL.,

Appellees

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF FLORIDA, TALLAHASSEE DIVISION

BRIEF OF ATLANTIC COAST LINE RAILROAD COMPANY, ET AL., APPELLEES

JAMES A. BISTLINE,
FRANK W. GWATHMEY,
Attorneys for Railroad Appellees.

OCTOBER 3, 1952.

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SUPREME COURT OF THE UNITED STATES

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No. 9

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APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF FLORIDA, TALLAHASSEE DIVISION

BRIEF OF ATLANTIC COAST LINE RAILROAD COMPANY, ET AL., APPELLEES

Opinions Below

The opinion of the specially constituted District Court appears in the Record at pages 132-139 and is reported in 101 F. Supp., at page 941.

The order of the Interstate Commerce Commission which gave rise to the proceedings in the District Court appears in the Record at pages 129-130; the report of the Commission upon which said order was made appears at pages 80-121 of the Record; and is reported 278 I. C. C., at pages 41-74, *Increases in Florida Intrastate Rates*.

Jurisdiction

The final judgment of the District Court was entered July 17, 1951 (R. 140) and appeal was allowed September 7, 1951 (R. 142). Jurisdiction of this Court is invoked under 28 U. S. C. 1253 and 2101(b). Probable jurisdiction was noted January 2, 1952 (R. 824).

Statute Involved

The statute involved is the Interstate Commerce Act, Part I, particularly Sections 13(2)(3)(4) and 15a(2) (49 U. S. C. Sections 13(2)(3)(4) and 15a(2)) and the 1940 declaration of "National Transportation Policy" which now constitutes a preliminary part of said Act (54 Stat. 899, 49 U. S. C. 4281 (1940))—reproduced in the Appendix, *infra*, pp. 68-70.

Statement of Case

This appeal brings up for review the final judgment (R. 140) of a statutory three-judge District Court for the Northern District of Florida, Tallahassee Division, Case No. 292-T-Civil, *King, et al.* v. *United States, et al.*, reported 101 F. Supp., pages 941-946 (R. 132-139). The judgment was entered upon a complaint (R. 1) filed September 16, 1950 by Wilbur C. King, Jerry W. Carter and Richard A. Mack, as and constituting the Florida Railroad and Public Utilities Commission, against the United States. The pur-

pose of the complaint was to enjoin, set aside and annul an order of the Interstate Commerce Commission, issued July 25, 1950 (R. 129) under the provisions of Section 13(4) of the Interstate Commerce Act, whereby that Commission directed a general raising of the rates and charges of the railroads operating in the State of Florida for the intrastate transportation of freight between points within said state.

A number of Florida shippers and shipper organizations intervened as plaintiffs. The Interstate Commerce Commission intervened as defendant and answered (R. 20), as did also the Atlantic Coast Line Railroad Company and eight other railroads constituting the major roads operating in Florida (R. 26).

The District Court denied the injunction prayed for and dismissed the complaint (R. 140).

The order complained of

The order complained of was made in a proceeding of investigation, Docket No. 30140, *Increases in Florida Intrastate Rates*, instituted by the Interstate Commerce Commission by order dated January 5, 1949 (R. 78) in response to a petition filed by Florida railroads (R. 28), with respect to the failure and refusal of the Florida Railroad and Public Utilities Commission to authorize or permit increases in the intrastate rates and charges, applicable upon shipments of freight moving between points within Florida, by amounts corresponding with increases theretofore authorized by the Interstate Commerce Commission (hereinafter referred to as the Commission) and made effective in the interstate rates and charges applicable upon shipments moving between points in Florida and points in other states, as well as generally throughout the south. All railroads operating in Florida, subject to the jurisdiction of

the Commission, were made respondents in said investigation.[1]

The report of the Commission was issued May 4, 1950 (R. 80). No order was entered immediately in No. 30140, it being stated in the report that an order would be entered "unless we are notified by the Florida Commission, within 30 days from the date of service of this report, that it will permit promptly the increases herein approved" (278 I. C. C., at p. 74, R. 121). Petitions for rehearing or reconsideration were thereafter filed by the Florida Railroad and Public Utilities Commission and by various shippers (R. 122); on June 27, 1950 the respondent railroads filed a reply to said petitions and motion for the entry of an order (R. 124); and by order dated July 25, 1950, said petitions were denied (R. 129) and on the same day the order here complained of was entered. The order provides as follows (R. 129):

> "This proceeding having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been made, and the Commission, on May 4, 1950, having made and filed a report containing its findings of fact and conclusions thereon, which report is hereby referred to and made a part hereof; and
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> "*It appearing*, That as set forth in said report and in accordance with the practice in such proceedings, the Commission stated that an order carrying into effect the findings in said report would be entered, unless we were notified by the Florida Commission, within 30 days from May 15, 1950, the date of service of said report, that it would permit promptly the in-

[1] I. & S. Docket No. 5646, *Sugar Cane from Florida to Clewiston, Fla.*, which concerned the suspension of a certain tariff publishing interstate transit rates in connection with the transportation of sugar cane to Clewiston, Fla., was heard immediately following the hearing in Docket No. 30140, *Increases in Florida Intrastate Rates*, and the two proceedings were orally argued before the Commission at the same time and are embraced in one report.

creases therein approved, and that no such notification has been made by the Florida Railroad and Public Utilities Commission:

"*It is ordered*, That respondents in this proceeding, according as they participate in the transportation, be, and they are hereby, notified and required to cease and desist, on or before September 28, 1950, upon notice to this Commission and to the general public by not less than 30 days' filing and posting in the manner prescribed in section 6 of the Interstate Commerce Act, and thereafter to abstain, from practicing (1) the unjust discrimination against interstate commerce, and (2) the undue preference of and advantage to certain persons and localities in intrastate commerce and, undue prejudice and disadvantage to certain persons and localities in interstate commerce, found in said report to exist.

"*It is further ordered*, That said respondents, according as they participate in the transportation, be, and they are hereby, notified and required to establish, on or before September 28, 1950, upon notice to this Commission and to the general public by not less than 30 days' filing and posting in the manner prescribed in section 6 of the Interstate Commerce Act, and thereafter to maintain and apply for the intrastate transportation of freight from and to points in the State of Florida freight rates and charges which shall be no lower than the approved rates and charges, or on the approved rate bases, as provided in said report.

"*And it is further ordered*, That this order shall continue in force until the further order of the Commission."

The ultimate findings of the Commission are set out in the report, which is made a part of the order (278 I. C. C. 41, 72, R. 80, 118), and are quoted in full at pp. 37-40, *infra*.

Questions Presented

1. In authorizing general increases in interstate freight rates, or in directing increases in intrastate freight rates

under the provisions of Section 13(3)(4), may the Commission lawfully give due consideration, among other things, to losses sustained by the railroads in connection with passenger service operations and on account of such losses make greater freight rate increases than might otherwise be needed?

2. Did the Commission make and set out in its report all findings, supported by evidence, appropriate and necessary for the support of the order here complained of?

Summary of Argument

1. The order complained of was necessary for the fulfillment of the duty imposed upon the Commission by the 1940 declaration of the National Transportation Policy and Sections 15a(2) and 13(3)(4) of the Interstate Commerce Act. The authority and duty of the Commission under Section 13(4) to order a raising of the intrastate rates of the particular railroads involved, for the purpose of enabling such roads to provide adequate and efficient transportation service as a part of the national transportation system, is no longer open to dispute.[2]

2. The record shows, and the Commission found, that the earnings of the railroads serving the State of Florida had fallen to a low level and that such roads were urgently in need of the additional revenue expected to be derived from the intrastate rate increases ordered by the Commission.

3. In determining the revenue needs of the railroads the Commission must of necessity consider revenues in their entirety as derived from operations as a whole, including

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[2] *Wisconsin R. R. Comm.* v. *C., B. & Q. R. Co.*, 257 U.S. 563.
Florida v. *United States*, 282 U.S. 194; 292 U.S. 1.
Georgia Public Service Comm. v. *United States*, 283 U.S. 765.
United States v. *Louisiana*, 290 U.S. 70.
Illinois Com. Com. v. *United States*, 292 U.S. 474.
North Carolina v. *United States*, 325 U.S. 507.

both freight and passenger operations. The Court has repeatedly upheld orders of the Commission directing a raising of intrastate rates following general increases theretofore authorized and made effective in interstate rates, such general increases having been determined upon a consideration of railroad revenues from all operations, both freight and passenger.[3]

4. Following nationwide investigations the Commission authorized successive general increases in interstate freight rates and charges of the railroads throughout the country, including interstate freight rates and charges applicable to, from or between points in the State of Florida. In so doing the Commission had before it and duly took into account the fact that following the war years and commencing about 1946 the railroads generally had sustained, and were continuing to sustain, serious and unavoidable losses in connection with their passenger service notwithstanding successively authorized increases in passenger fares.[4] The authorized interstate increases having been determined in that manner, the Commission was fully justified in determining in the same way the increases required in Florida intrastate rates for the removal of undue and unlawful discrimination against interstate commerce within the meaning of Section 13(4).

5. The passenger deficits incurred by the Florida railroads, although substantial in amount, were in no way out of line with the passenger deficits of other railroads generally throughout the south and such deficits had been incurred in connection with intrastate, as well as interstate, operations. Losses from passenger operations rep-

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[3] *Wisconsin R.R. Comm.* v. *C., B. & Q. R. Co.*, 257 U.S. 563.
United States v. *Louisiana*, 290 U.S. 70.
New York v. *United States*, 257 U.S. 591.

[4] *Increased Railway Rates, Fares and Charges, 1946*, 266 I.C.C. 537, 605.
Increased Freight Rates, 1947, 270 I.C.C. 403, 424.

resent a condition which bears alike upon both intrastate and interstate rates. Unless passenger operating losses may be recouped by increases in intrastate freight rates, so long as such increased rates are not unreasonable, an added burden will thereby be imposed upon interstate shippers of freight.

6. The Commission made all findings appropriate and necessary for the support of the order here complained of, including a finding that the intrastate freight rates as increased were not excessive or unreasonable, and such findings are supported by evidence as fully summarized and reviewed in the Commission's report.

7. In conformity with the admonitions of this Court in similar proceedings, the Commission accompanied its findings with a saving clause expressly reserving to any interested party or parties the right to apply for modification of the findings as to any specific intrastate rates or charges.

ARGUMENT

I

The Order Made by the Commission Was Necessary for the Fulfillment of the Duty Imposed Upon That Body by the 1940 Declaration of National Transportation Policy and Sections 15a(2) and 13(4) of the Interstate Commerce Act.

During the period 1946-1948, in proceedings known as Ex Parte No. 162, *Increased Railway Rates, Fares and Charges, 1946*, 266 I. C. C. 537 (hereinafter referred to as "Ex Parte No. 162"), and Ex Parte No. 166, *Increased Freight Rates, 1947*, 269 I. C. C. 33, 270 I. C. C. 81, 270 I. C. C. 93, and 270 I. C. C. 403 (hereinafter referred to as "Ex Parte No. 166"), the Commission, acting in pursuance of the authority and duty vested in it by Sections 13(2) and 15a(2) of Part

I, Interstate Commerce Act (U. S. C. Title 49, Sections 13(2) and 15a(2)), and by the declaration of National Transportation Policy which now constitutes a preliminary part of said Act (54 Stat. 899, 49 U. S. C. 4281), conducted successive general investigations of the interstate freight rates and charges of the railroads throughout the United States.[5] Upon a showing by the railroads of rapidly mounting operating costs, due particularly to repeated increases in wage costs, increased costs of materials and supplies and increased taxes, and the urgent need of revenue to enable them to maintain adequate transportation service, the Commission authorized successive general percentage increases in basic interstate freight rates and charges, with increases in varying amounts on certain particular commodities:

In the first proceeding, Ex Parte No. 162, the Commission made the following finding:

> "1. It is requisite for the carrying out of the purpose of the national transportation policy, and the development, coordination, and preservation of a national transportation system adequate to meet the needs of commerce, the postal service, and the national defense, and in order that freight rates and charges shall be such as to move the greatest volume of traffic,

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[5] By the 1940 declaration of "National Transportation Policy" (49 U.S.C. 4281) Congress has directed, as the rule of rate making to be observed by the Commission, that all of the provisions of the Interstate Commerce Act shall be administered

> "to the end of developing, coordinating, and preserving a national transportation system by water, highway, and rail, as well as other means, adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense."

By Section 15a(2) of the Act the Commission is directed, in the exercise of its power to prescribe just and reasonable rates, to give due consideration

> "to the need in the public interest, of adequate and efficient railway transportation service at the lowest cost consistent with the furnishing of such service; and to the need of revenues sufficient to enable the carriers, under honest economical, and efficient management, to provide such service."

while providing adequate and efficient transportation at the lowest cost consistent with the furnishing of such service, and to enable the petitioning carriers by railroad and by water under honest, economical, and efficient management to provide such service, that there be substantial increases in the basic freight rates and charges of the petitioners, and the continued maintenance of the present temporarily increased basis of passenger fares and charges."

Increased Railway Rates, Fares and Charges, 1946, 266 I. C. C. 537, 614.

The increase thus authorized in Ex Parte No. 162 was a general increase of 20 percent in basic interstate freight rates and charges throughout the United States, with increases in different amounts in the case of certain individual commodities.

In the second proceeding, Ex Parte No. 166, upon a showing by the railroads that they had been confronted with additional and substantial increases in wages of employees, as well as further increases in costs of materials and supplies and taxes, the Commission on account of the emergency of the situation at first authorized immediate additional increases (generally 10 percent) in interstate freight rates and charges which were in the nature of interim increases to continue pending completion of the investigation. In authorizing such emergency interim increases the Commission stated in the Ex Parte No. 166 report of October 6, 1947:

"We are fully conscious of the fact that freight rates must be paid by shippers and receivers of freight and ultimately borne by the commerce of the country. It is clear to us, however, that increasing costs of operation now pose, and unchecked will continue to pose, a serious threat to the maintenance of adequate transportation service; that the railroads as a whole, and many of the most important railroads of the country in

particular, are definitely facing such a threat at the present time; that the public vitally needs an efficient transportation service, and imperatively demands a transportation system that is adequate for the national defense in any emergency."

Increased Freight Rates, 1947, 269 I. C. C. 33, 53.

In the second report in the same proceeding the 10 percent interim increase previously authorized was raised to an interim increase of 20 percent (270 I. C. C. 81). In the third report (270 I. C. C. 93) the interim increases were superseded by general percentage increases varying in amount in the different territorial divisions of the country, the increase authorized within the South, i. e., the territory generally described as lying south of the Ohio and Potomac Rivers and east of the Mississippi River, being 25 percent, with certain variations as to particular commodities. In the fourth and final report in Ex Parte No. 166 the general increase of 25 percent for the South was continued, but various modifications were made in the authorized increases in rates on individual commodities (270 I. C. C. 403).[6]

The increases successively authorized were accordingly made effective by the railroads in respect to the interstate rates throughout the United States, including the interstate rates applicable between points in the state of Florida and

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[6] Thereafter, in Ex Parte No. 168, *Increased Freight Rates, 1948*, 276 I.C.C. 9, the Commission, on account of the continuing rise in railroad operating expenses subsequent to Ex Parte 162 and Ex Parte 166, authorized another and further general increase in interstate freight rates and charges, including an increase of 10 percent within southern territory, with certain exceptions. However, at the time of the hearing in *Increases in Florida Intrastate Rates*, Docket No. 30140, the Florida Commission had not passed upon the rail carriers' application for authority to make corresponding increases in Florida intrastate rates and said Ex Parte 168 increases were not included in or covered by the proceeding before the Commission nor are they involved here. This case relates to Ex Parte 162 and Ex Parte 166 increases only.

points in other states, as well as elsewhere throughout the South.

In both the Ex Parte No. 162 and Ex Parte No. 166 proceedings, above referred to, the Commission in its consideration of the revenue needs of the railroads dealt throughout with the results of operations as a whole, including both freight and passenger operations. In recognition of the fact that railroad revenues are derived to a substantial extent from intrastate traffic in the several states, the Commission also took into account the revenue derivable from both intrastate and interstate operations for the purpose of determining the amounts of the authorized rate increases and estimating the anticipated increase in railroad revenues to be derived therefrom. Anticipating that the various state commissions would be requested to permit corresponding increases in intrastate rates, a designated committee of cooperating state commissioners was invited to and did sit with the Commission during the hearings and at the oral arguments and thereafter participated in its deliberations.

In the final report in Ex Parte No. 166 it was stated that the Committee of Cooperating State Commissioners "authorize us to state that they concur in the foregoing report." *Increased Freight Rates, 1947*, 270 I. C. C. 403, 463. In the same report it was also said (p. 440):

> "Considering the entire record upon this feature of the proceeding, we conclude that the orders heretofore entered, *especially when action by the State authorities is finally completed upon the carriers' proposals*, meet the emergency needs of the petitioning carriers, as shown by the record, supplemented by examination of the reports and returns which we are privileged to use under the general stipulation." (Emphasis supplied.)

The commissions of various states—including, among others, the states of Alabama, Tennessee, Texas and Ari-

zona, as well as Florida—thereafter failed and refused to sanction increases corresponding fully with the authorized interstate increases.[7] The Florida Railroad and Public Utilities Commission refused, in respect to all Florida intrastate traffic, to permit the final Ex Parte No. 166 increase of 25 percent and authorized instead a general increase of only 20 percent. On various particular commodities and classes of traffic both the Ex Parte No. 162 and Ex Parte No. 166 increases were either denied altogether or were authorized in amounts less than the corresponding increases in the interstate rates applicable to and from points in Florida.[8] In the report which accompanied the order here complained of the Commission found and stated that the resulting differences between the authorized intrastate and interstate increases meant a difference in and loss of revenue to the Florida railroads in an estimated amount of *more than $915,325.00 per annum*, and that the great preponderance of this severe loss fell upon the three principal railroads operating in Florida, namely, Atlantic Coast Line, Seaboard Air Line and Florida East Coast Railway. *Increases in Florida Intrastate Rates*, 278 I. C. C. 41, 65 (R. 109, 110).[9]

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[7] Proceedings under section 13 relating to the intrastate rates in the other states above referred to were instituted and are reported as *Increases in Alabama Freight Rates and Charges*, 274 I.C.C. 439; *Increases in Tennessee Freight Rates and Charges*, 272 I.C.C. 625; *Texas Intrastate Rates*, 273 I.C.C. 749; *Increases in Arizona Freight Rates and Charges*, 270 I.C.C. 105.

[8] The several orders of the Florida Commission appear in the Record at pp. 41, 65, 67.

[9] The Atlantic Coast Line operates in the states of Virginia, North Carolina, South Carolina, Georgia, Alabama and Florida, its system mileage (as of the time of the hearing before the Commission) totaling 5,526 miles of road of which 1,942 miles lay in Florida. The Seaboard Air Line operates in the same six southern states, with system mileage of 4,153 miles of which 1,506 miles are in Florida. The lines of the Florida East Coast Railway lie wholly within Florida and embrace a total of 575 miles of road. The lines of these three railroads collectively penetrate practically all portions of the state. Other railroads having a comparatively small

From the foregoing it appears that the authorities of the state of Florida were not alone in denying rate increases but that similar action was taken by the commissions of various other states, including the southern states of Alabama and Tennessee which are served in part by the same railroads that serve the state of Florida. If the state commissions throughout the country are to be permitted to require at will substantial departures, with resulting substantial denials of railroad revenue, from the general basis of freight rates found by the Commission to be necessary for the maintenance of an adequate national transportation system—such basis having been determined as in this instance with the cooperation and approval of representatives of the state commissions as a whole, and in anticipation of corresponding increases in the intrastate rates—it must follow inevitably that the power of the Commission to administer the Interstate Commerce Act and the National Transportation Policy as declared by Congress will be virtually emasculated and destroyed. The order here complained of was necessary for the fulfillment of the statutory duty and authority vested in the Commission.

II

The Commission's Authority and Duty Under Section 13(3)(4) to Require the Raising of Intrastate Railroad Rates, for the Removal of Undue and Unlawful Discrimination Against Interstate Commerce, Is Well Settled by the Decisions of This Court.

The general principles governing the Commission's statutory authority and duties relating to intrastate rail-

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amount of mileage in Florida include such roads as the Louisville & Nashville R.R., 243 miles; Georgia Southern & Florida Ry., 157 miles; and St. Louis-San Francisco Ry., 47 miles, the lines of these three last-named roads extending southward into Florida from the northern boundary of the state (R. 176, 211).

road rates have heretofore been set forth in numerous decisions of this Court, including among others the following:

Wisconsin R. R. Comm. v. *C., B. & Q. R. Co.*, 257 U. S. 563;
New York v. *U. S.*, 257 U. S. 591;
U. S. v. *Louisiana*, 290 U. S. 70;
Alabama v. *U. S.*, 283 U. S. 776;
Georgia Pub. Serv. Comm. v. *U. S.*, 283 U. S. 765;
Ohio v. *United States*, 292 U. S. 498;
Illinois Com. Com. v. *U. S.*, 292 U. S. 474;
Florida v. *U. S.*, 282 U. S. 194;
Florida v. *U. S.* 292 U. S. 1;
North Carolina v. *U. S.*, 325 U. S. 507.

No extensive discussion of these decisions is believed to be necessary. Suffice it to say, these decisions hold that section 13(3)(4) confers upon the Commission the power and duty to deal with rates, fares or charges "made or imposed by authority of any state" upon a finding that such rates, fares or charges bring about either or both of two separate and distinct situations, both of which are declared to be unlawful:

1. Any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce, on the one hand, and interstate or foreign commerce, on the other hand. This is sometimes referred to as "persons-localities" preference or prejudice;

2. Any undue, unreasonable, or unjust discrimination against interstate or foreign commerce. This is sometimes referred to as "revenue discrimination against interstate commerce."

Upon a finding, after full hearing, that the rates, fares or charges made or imposed by state authority cause *either* or

both of the things thus declared to be unlawful, the Commission is *required* by the terms of the statute to prescribe

> "the rate, fare, or charge, or the maximum or minimum or maximum and minimum thereafter to be charged, * * * in such manner as, in its judgment, will remove such advantage, preference, prejudice or discrimination."

In the first of the two situations declared to be unlawful the question is one of the relationship between the intrastate and the interstate rates, fares or charges. *Florida* v. *United States*, 282 U. S. 194, 214. In the second situation declared to be unlawful the question is one of the relationship of the rates, fares or charges to revenue, and the Commission has full authority to regulate intrastate rates, fares or charges for the purpose of protecting the general revenues of the carriers needed for the maintenance of an adequate national railway system. *Florida* v. *United States*, *supra*.

In the case just cited the Court, speaking through Mr. Chief Justice Hughes, stated (282 U. S., p. 212):

> "The authority granted by section 13(4) is thus to be considered in the light of the affirmative duty of the Commission to fix rates and to take other important steps to maintain an adequate national railway system.
>
> "As intrastate rates and the income from them must play a most important part in maintaining such a system, the effective operation of the act requires that intrastate traffic should pay 'a fair proportionate share' of the cost of maintenance. And if there is interference with the accomplishment of the purpose of the Congress because of a disparity of intrastate rates, as compared with interstate rates, the Commission is authorized to end the disparity by directly removing it."

In the leading case of *Wisconsin R. R. Comm.* v. *Chicago, B. & Q. R. Co.*, 257 U. S. 563, the Court said (p. 585):

"Intrastate rates and the income from them must play a most important part in maintaining an adequate national railway system. Twenty per cent of the gross freight receipts of the railroads of the country are from intrastate traffic, and fifty percent of the passenger receipts. The ratio of the gross intrastate revenue to the interstate revenue is a little less than one to three. If the rates, on which such receipts are based, are to be fixed at a substantially lower level than in interstate traffic, the share which the intrastate traffic will contribute will be proportionately less. If the railways are to earn a fixed net percentage of income, the lower the intrastate rates, the higher the interstate rates may have to be. *The effective operation of the act will reasonably and justly require that intrastate traffic should pay a fair proportionate share of the cost of maintaining an adequate railway system.*" (Emphasis supplied.)

To the same effect is what was said by Mr. Chief Justice Hughes and Mr. Justice Stone in the more recent cases of *United States* v. *Louisiana*, 290 U. S. 70; *Florida* v. *United States*, 292 U. S. 1; and *Illinois Commerce Commission* v. *United States*, 292 U. S. 474. In the case last cited it was said:

"The scope and application of section 13(4) have so recently been fully considered in opinions of this Court in United States v. Louisiana, 290 U. S. 70, 78 L. Ed. 50, 54 S. Ct. 28; Florida v. United States, No. 342, decided April 2, 1934 [292 U. S. 1, ante, 1077, 54 S. Ct. 603]; see also Georgia Pub. Serv. Commission v. United States, 283 U. S. 765, 75 L. Ed. 1397, 51 S. Ct. 619; Florida v. United States, 282 U. S. 194, 75 L. Ed. 291, 51 S. Ct. 119, that it is unnecessary to repeat that discussion here. Under section 13(4) of the Interstate Commerce Act, the Interstate Commerce Commission is given plenary power to remove the discrimination created by intrastate rates against interstate commerce, by raising intrastate rates so that the intrastate traffic

may produce its fair share of the revenue required to meet maintenance and operating costs and to yield a fair return on the value of property devoted to the transportation service."

In *North Carolina* v. *United States*, 325 U. S. 507, which concerned an order of the Commission relating to the intrastate passenger fares of North Carolina railroads, the Court again clearly recognized this power of the Commission to deal with intrastate rates, but it was also pointed out that there are requirements surrounding the exercise of such power by the Commission, one of which is that the order must be supported by all appropriate and necessary findings. Speaking through Mr. Justice Black, the Court said (p. 511):

"The power of the Interstate Commerce Commission with reference to such intra-state rates is dominant only so far as necessary to alter rates which injuriously affect interstate transportation. American Exp. Co. v. South Dakota, 244 U. S. 617, 625, 61 L. Ed. 1352, 1358, 37 S. Ct. 656, P.U.R. 1917F 45. A scrupulous regard for maintaining the power of the state in this field has caused this Court to require that Interstate Commerce Commission orders giving precedence to federal rates must meet 'a high standard of certainty.' Illinois C. R. Co. v. State Pub. Utilities Commission, 245 U. S. 493, 510, 62 L. Ed. 425, 438, 38 S. Ct. 170, P.U.R. 1918C 1279. Before the Commission can nullify a state rate, justification for the 'exercise of the federal power must clearly appear.' Florida v. United States, 282 U. S. 194, 211, 212, 75 L. Ed. 291, 301, 302, 51 S. Ct. 119. See also Yonkers v. United States, 320 U. S. 685, 88 L. Ed. 400, 64 S. Ct. 327. And the intention to interfere with the state's rate-making function is not to be presumed, Arkansas R. Commission v. Chicago, R. I. & P. R. Co., 274 U. S. 597, 603, 71 L. Ed. 1224, 1228, 47 S. Ct. 724; nor must its intention in this respect be left in serious doubt. Illinois Commerce Commission v. Thomson,

318 U. S. 675, 684, 685, 87 L. Ed. 1075, 1081, 1082, 63 S. Ct. 834. The foregoing cases also stand for the principle that the Interstate Commerce Commission is without authority to supplant a state-prescribed intrastate rate unless there are clear findings, supported by evidence, of each element essential to the exercise of that power by the Commission."

In the same opinion the Court further said (325 U. S., p. 516):

> "But the question posed by the Commission's conclusion was whether the particular North Carolina railroads were obtaining from North Carolina's intra-state passenger rates their fair part of such funds as were required to enable these particular railroads to render adequate and efficient service."

And further (at p. 520):

> "The purpose of the National Transportation Law is to assure railroads a fair net operating income and no more. Dayton-Goose Creek R. Co. v. United States, 263 U. S. 456, 68 L. Ed. 388, 44 S. Ct. 169, 33 A.L.R. 472. The power of the Commission to require states to raise their intrastate rates depends upon whether intra-state traffic is contributing its fair share of the earnings required to meet maintenance and operating costs and to *yield a fair return on the value of property directed to the transportation service* both interstate and intrastate. United States v. Louisiana, 290 U. S. 70, 75, 78 L. Ed. 181, 185, 54 S. Ct. 28. But the Commission cannot 'require intra-state rates to be raised above a reasonable level.' United States v. Louisiana, supra (290 U. S. 78, 78 L. Ed. 181, 54 S. Ct. 28)." (Italics the Court's.)

It is well settled also that the Commission is the duly constituted fact-finding body and its findings of fact, if supported by substantial evidence, are not subject to review.

As was said in *Interstate Commerce Commission* v. *Union Pacific R. R.*, 222 U. S. 541, at page 547:

> "In determining these mixed questions of law and fact, the court confines itself to the ultimate question as to whether the Commission acted within its power. It will not consider the expediency or wisdom of the order, or whether, on like testimony, it would have made a similar ruling. 'The findings of the Commission are made by law *prima facie* true, and this court has ascribed to them the strength due to the judgments of a tribunal appointed by law and informed by experience.' *Ill. Cent.* v. *I. C. C.*, 206 U. S. 441. Its conclusion, of course, is subject to review, but, when supported by evidence, is accepted as final; not that its decision, involving, as it does, so many and such vast public interests, can be supported by a mere scintilla of proof, *but the courts will not examine the facts further than to determine whether there was substantial evidence to sustain the order.*" (Emphasis supplied.)

In *Florida* v. *United States*, 292 U. S. 1, in dealing specifically with findings by the Commission of undue discrimination under section 13(4) of the Act, the Court stated, at page 12:

> "The question of the weight of the evidence was for the Commission and not for the court. The authority conferred upon the Commission by section 13(4) of the Interstate Commerce Act, with respect to intrastate rates, is not different in its quality or effect from that given to the Commission to prevent other sorts of unjust discrimination against interstate commerce. That authority rests upon the constitutional power of the Congress, extending to interstate carriers as instruments of interstate commerce, to require that these agencies shall not be used in such manner as to cripple, retard, or destroy that commerce, and to provide for the execution of that power through a subordinate body. Shreveport Case (Houston, E. & W. T. R. Co. v. United States), 234 U. S. 342, 351, 354, 355, 58 L. Ed. 1341, 1348,

1349, 1350, 34 S. Ct. 833; Railroad Commission v. Chicago, B. & Q. R. Co., 257 U. S. 563, 66 L. Ed. 371, 42 S. Ct. 232, 22 A.L.R. 1086, supra. The purpose for which the Commission was created was to bring into existence a body which, from its special character, would be best fitted to determine, among other things, whether upon the facts in a given case there is an unjust discrimination against interstate commerce. United States v. Louisville & N. R. Co., 235 U. S. 314, 320, 59 L. Ed. 245, 250, 35 S. Ct. 113. That purpose unquestionably extended to the prohibited discrimination produced by intrastate rates. *In relation to such a discrimination, as in other matters, when the Commission exercises its authority upon due hearing, as prescribed, and without error in the application of rules of law, its findings of fact supported by substantial evidence are not subject to review. It is not the province of the courts to substitute their judgment for that of the Commission.*" (Emphasis supplied.)

As was said also by Mr. Justice Roberts in *Ohio* v. *United States*, 292 U. S. 498, 506, which was a proceeding arising under section 13(3)(4) of the Act:

> "In effect, we are asked to re-examine the evidence, appraise it, and hold the Commission erred in its judgment as to the facts. *We have often said that we have no such power.*" (Emphasis supplied.)

In *Interstate Commerce Commission* v. *Jersey City*, 322 U. S. 503, it was said in the opinion by Mr. Justice Jackson (p. 512):

> "Each of the findings of fact by the Commission appears to be supported by substantial evidence. The court below has not found to the contrary, nor do we."
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> * * * * * * *
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> "'Moreover, the Commission's order does not become suspect by reason of the fact that it is challenged. It is the product of expert judgment which carries a

presumption of validity. And he who would upset the rate order under the Act carries the heavy burden of making a convincing showing that it is invalid because it is unjust and unreasonable in its consequences.' Federal Power Commission v. Hope Natural Gas Co., 320 U.S. 591, 602, ante, 333, 64 S. Ct. 283."

See also

Virginian R. Co. v. *United States*, 272 U.S. 658, 665.
United States v. *Berwind-White Coal Min. Co.*, 274 U.S. 564, 580.
Western Paper Makers' Chemical Co. v. *United States*, 271 U.S. 268, 271.
Interstate Commerce Commission v. *Louisville & N. R. Co.*, 227 U.S. 88, 100.
Helvering v. *National Grocery Co.*, 304 U.S. 282, 294.
Federal Power Comm. v. *Nat. Gas Pipe Line Co.*, 315 U.S. 575, 586.

III

In Ordering a Raising of Florida Intrastate Freight Rates, for the Removal of Undue and Unlawful Discrimination Against Interstate Commerce, the Commission Properly Considered the Revenues of the Florida Railroads from All Operations, Both Freight and Passenger.

1.

Both freight and passenger operations and revenues were considered by the Commission when authorizing the general increases in interstate freight rates.

There can be no dispute about the fact that in both the Ex Parte No. 162 and Ex Parte No. 166 proceedings the Commission, in authorizing general increases in interstate freight rates throughout the United States for the purpose of providing needed railroad revenue, dealt throughout with railroad revenues *as a whole*, as derivable

from both freight and passenger operations. The Commission duly took into account the deficits from passenger operations which began to be incurred following the war years and thereafter continued in increasing amount notwithstanding successively authorized increases in passenger fares. In the report of August 5, 1946 in Ex Parte No. 162 it was stated (*Increased Railway Rates, Fares and Charges, 1946*, 266 I.C.C. 537, at p. 606):

> "A tentative separation made by the petitioning railroads of operating revenues and expenses, estimated, for 1946 and 1947, as between the freight and passenger services indicates an expected deficit in net railway operating income from passenger service of $83,000,000 in 1946, and $445,000,000 in 1947."

In the report of July 27, 1948 in Ex Parte No. 166 (*Increased Freight Rates, 1947*, 270 I.C.C. 403, at pp. 424, 425), it was said:

> "Prior to 1942, railroad passenger service was generally operated at a deficit, but during the war years, 1942-1945, substantial earnings were derived therefrom, primarily because of the large and unprecedented volume of passenger transportation incident to the war. Since the close of hostilities travel has substantially declined, although it is still greater than in any previous peacetime period. This decline, coupled with rapidly increasing operating expenses and taxes, has again produced a revenue deficit from the railroad passenger service."

There then followed in the report a reference to the various increases theretofore authorized by the Commission in passenger fares.

Thereafter, in Ex Parte No. 168, *Increased Freight Rates, 1948*, 276 I.C.C. 9, at pages 32 to 40, inclusive, the Commission reviewed at length the entire subject of "passenger deficits" and after referring to some of its earlier de-

cisions, as well as such court cases as the *Minnesota Rate Cases*, 230 U.S. 352, *Northern Pacific Ry. Co.* v. *North Dakota*, 236 U.S. 585, and *Norfolk & W. Ry. Co.* v. *Conley*, 236 U.S. 605, it was said (276 I.C.C., p. 35):

> "In *Fifteen Percent Case, 1931*, a general revenue case, 178 I.C.C. 539, 564-5, citing the *Northern Pacific* and *Norfolk & Western* decisions of the Supreme Court, and following *Revenues in Western District, supra*, we said:
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> > 'It is not our view that these cases prevent the imposition of a burden upon one form of service to compensate for an inevitable deficiency in earnings of another form of service performed by the same carrier. * * * However, the earnings of the particular service in question are entitled to consideration in the fixing of reasonable rates.'
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> "In *Fifteen Percent Case, 1937-1938*, 226 I.C.C. 41, 54, which was another general freight increase proceeding, we said:
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> > 'The interrelation of the freight and passenger traffic has often been commented on by us, and we have declined to accede to the proposition again repeated here by certain protestants that we can authorize no increase in freight rates to correct deficiencies in aggregate earnings growing out of the inability of the passenger business to meet its full share of the revenue burden. *Revenues in Western District*, 113 I.C.C. 3, 22-23; *Fifteen Per Cent Case, 1931*, 178 I.C.C. 539, 565; compare *General Commodity Rate Increases, 1937, supra*. [223 I.C.C. 657.]'
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> "These cases are typical of our more recent holdings upon this question. While we regard it as 'trite to say that each particular service, coach, sleeper, parlor car, and head end, should as nearly as may be pay its own way and return a profit' (*Eastern Passenger Fares in Coaches*, 227 I.C.C. 17, 25), and we

have accepted the contention that there may be traffic that should not be burdened with a shortage of passenger service return (*Livestock, Western District Rates*, 190 I.C.C. 611, 629), yet, if passenger service inevitably and inescapably cannot bear its direct costs and its share of joint or indirect costs, we have felt compelled in a general rate case to take the passenger deficit into account in adjustment of freight rates and charges. Both the freight and passenger services are essential, and revenue losses or deficits on the one necessarily must be compensated by earnings on the other if the carriers are to continue operations. Both may be subjected to reasonable rates and charges to produce the fair aggregate return, even though thereby a higher rate of return may be exacted from the one than from the other. (*Property Owners' Committee* v. *Chesapeake & O. Ry. Co.*, 237 I.C.C. 549, 565.)"

The Commission also pointed out that conditions had changed since the time of its earlier decisions, such as the *Five Percent Case*, 31 I.C.C. 351 (decided in 1914), it being stated (276 I.C.C., p. 34):

> "However, because of changed theories adopted by Congress in the Transportation Act, 1920, and because as a practical matter the increasing degree of unprofitableness of the passenger traffic *menaced the continuity of an adequate national system of transportation*, we were forced to a more comprehensive view of this question. We observe, also, that at the time of those decisions the railroads enjoyed a practical monopoly in supplying transportation, but that situation no longer exists." (Emphasis supplied.)

It was further noted in the same report that the passenger service deficits of the railroads are by no means assignable entirely to the carriage of passengers, since the railroads engage extensively in the transportation in passenger trains of "physical things or commodities" such as

baggage, mail, express and milk, the expense of which has been borne by the passenger service and not by the freight service; that such transportation of things in passenger service had shown, as nearly as could be ascertained, a net operating deficit in every year from 1936 through 1948; and that such deficit "has been steadily, though irregularly, increasing"; and it was then stated (276 I.C.C., p. 39):

> "Much of the burden of the passenger service deficit, therefore, is apparently quite unrelated to the carriage of passengers, with perhaps some qualification for baggage. Instead, it is attributable to the transportation of commodities which move in passenger trains instead of freight trains, not because of any essential difference in the character of the commodities or things carried in the freight and passenger services but primarily for reasons of expedition of service."

It thus appears that in a long line of decisions, including *Fifteen Percent Case, 1931*, 178 I.C.C. 539, *Fifteen Percent Case, 1937-1938*, 226 I.C.C. 41, and including also Ex Parte No. 162 and Ex Parte No. 166, as well as the more recent Ex Parte No. 168, *Increased Freight Rates, 1948*, 276 I.C.C. 9, the Commission, when authorizing successive general increases in *interstate* freight rates, has dealt with railroad operations as a whole, including both freight and passenger, and has taken fully into account the matter of passenger deficits. The successively authorized general increases in the interstate freight rates were made effective by the railroads and the interstate rates throughout the country, including the interstate rates to and from points in Florida, continue to reflect such general increases. When such increases were authorized in Ex Parte No. 162 and Ex Parte No. 166 neither the Florida Railroad and Public Utilities Commission nor any other parties to those proceedings undertook to question in the courts the validity of the Com-

mission's action or the propriety of its procedure, although they had every opportunity to do so had they so elected.

Appellants are here contending, however, that the Commission was not justified in similarly taking into account the passenger deficits of the Florida railroads when directing a raising of Florida intrastate freight rates pursuant to the provisions of section 13(3)(4).

2.

The Commission properly took into account the passenger deficits of the Florida railroads when directing an increase in Florida intrastate freight rates under the provisions of section 13(3)(4).

In the report which accompanied the order here complained of the Commission, under the caption "Passenger Deficits", again referred to its prior decisions upon this subject, including Ex Parte No. 168, and it was then stated (*Increases in Florida Intrastate Rates*, 278 I.C.C. 41, at p. 67, R. 112):

> "Increased passenger deficits, by reason of the continuing rise in operating expenses and the growing use of other forms of transportation, is a condition bearing alike upon intrastate and interstate rates. There is here no claim or showing that the passenger deficits of the respondents do not result from intrastate as well as interstate operations, and the passenger deficit of the East Coast, which operates entirely within Florida, would appear to indicate to the contrary.
>
> "The record affords no justification for a difference in treatment in this respect between Florida intrastate traffic, on the one hand, and interstate traffic to and from Florida, on the other hand. The question of passenger deficits is a serious one for both carriers and shippers, *and would become even more serious for interstate shippers if this burden were imposed entirely upon them.*" (Emphasis supplied.)

As the Commission here pointed out, such passenger deficits as the Florida railroads have incurred have arisen in connection with the intrastate and interstate operations alike of these railroads. And if the intrastate traffic in Florida should be relieved from participation in this loss a correspondingly greater burden would thereby be imposed upon the interstate traffic. It is obvious also that the same increases in wage costs and costs of materials, supplies and taxes, which were the immediate cause of the railroads' petitions for general rate increases in Ex Parte No. 162 and Ex Parte No. 166, bore alike upon the passenger as well as freight operations of the railroads, including both interstate operations and intrastate operations in Florida.

There has been no showing here that the passenger deficits of the Florida railroads, although substantial in amount, were disproportionate or out of line with the passenger deficits of other southern railroads. In the report in *Increased Freight Rates, 1948, supra*, it was noted (276 I.C.C. at p. 40) that in 1948 the railroads in the Southern Region as a whole showed a passenger service operating ratio, *i.e.*, ratio of operating expenses to revenues, of 127.2 percent. In the same year the corresponding figures for the three principal Florida railroads were, for the Atlantic Coast Line 127 percent; for the Seaboard Air Line 128 percent; and for the Florida East Coast Railway 120 percent (Ex.No. 1, Sch. 30, 31, R. 208, 596, 597; Ex. No. 170, R. 820A, 231).

There has likewise been no suggestion in this record that the continued maintenance of adequate passenger service by the Florida railroads is not a matter of importance to the people of Florida. As the Commission observed in *Increased Freight Rates, 1948, supra* (276 I.C.C., p. 35), "both the freight and passenger services are essential." We suppose it will hardly be disputed that adequate passenger

service—particularly the through interstate train service between northern points and Florida whereby thousands of visitors are transported annually to and from the state—is advantageous to the interest of the state as a whole. Neither have appellants undertaken to deny that the Florida railroads, in common with other railroads throughout the country, have been making every effort to reduce passenger operating losses by discontinuing unprofitable and unnecessary trains wherever practicable, as well as by other means.[10] Their passenger fares have also been established necessarily with the view of holding the traffic to the railroads and avoiding its diversion to other and competing forms of transportation.

Appellants particularly emphasize and rely upon alleged excessive, although greatly exaggerated, rates of return said by them to be derived by the Florida railroads from their freight service standing alone.[11] It is hardly neces-

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[10] In *Increased Freight Rates, 1948*, 276 I.C.C., at p. 36, it is stated:

> "Indicative of the increase in unprofitableness of the passenger service, and also of the drastic remedies taken by the railroads to counteract the drain on their net revenue, is the fact that passenger service has been abandoned completely on many thousands of miles of railroads. Between the end of 1923 and the beginning of the present year, the miles of line operated in passenger service of the class I roads decreased from 224,762 to 159,373, a total of 65,389 miles, or 29.1 percent in 26 years. A small portion only of this service has been replaced by rail-owned bus lines. In addition to total abandonments, much curtailment of service has occurred, which is impossible to portray statistically."

[11] Exhibits filed by witness Pettijohn, representing the Florida Commission (Nos. 66 and 67, R. 313, 771), purport to show that the Florida East Coast Ry. earned a return from freight operations of 8.2288 per cent in 1947 and in 1948 a return of 12.3538 percent. The exhibits are not only erroneous but are also based upon purely arbitrary apportionments. For example, witness Pettijohn shows for the F.E.C. Ry. an investment in railroad property used in transportation service of $76,101,014 in 1947 and $75,595,884 in 1948. The correct figures are *$97,349,387* and *$97,610,284*, respectively, as taken from F.E.C. Ry's annual reports to the Commission and shown in Ex. No. 1, Sch. 3 (R. 201, 575). Witness Pettijohn also makes an arbitrary and unexplained assignment of property invest-

sary, however, to point out that any such attempted computation of rates of return, freight versus passenger, involves purely arbitrary assumptions respecting the extent to which roadway and other railroad facilities are used by the freight and passenger services, respectively. It is unquestionably true also that even if passenger operations should be discontinued entirely a very substantial portion of property investment which might otherwise be assignable to passenger service would still have to be continued and assigned to freight. Especially is this so in the case of the Florida railroads whose freight traffic, as is well known, consists to a large extent of perishable fruits and vegetables, which require and receive a special type of freight service in trains that are operated on exceptionally fast schedules with resulting greater strain upon roadway and equipment.

The record here discloses that the urgent need of these railroads for additional revenue, like the need of other railroads throughout the country, was brought about to a substantial extent by reason of severe passenger operating losses, as well as by reason of increases in wage costs, costs of materials and supplies and taxes. But the Commission, as we have pointed out above, necessarily considered the earnings of these Florida railroads from operations *as a whole* for the purpose of ascertaining "the earnings required to meet maintenance and operating costs and to yield a fair return on the value of property directed to the transportation service both interstate and intrastate" (*North Carolina* v. *United States*, 325 U.S., p. 520). The Commission dealt with such railroad revenues as a whole when determining the needed increases in interstate rates, includ-

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ment to freight and passenger operations, respectively. In 1948 this apportionment is made on practically a 50-50 basis, while in 1947 about 57 percent is assigned to freight. The exhibits above referred to were offered during the hearing before the Commission, but the Commission made no such findings as these exhibits purport to substantiate.

ing the interstate rates to and from points in Florida. It was clearly justified in determining in the same way the needed increase in the intrastate rates of the Florida railroads.

The general rate increases authorized by the Commission in the Ex Parte No. 162 and Ex Parte No. 166 proceedings were directed to the end of developing and preserving the national railway transportation system, the maintenance of which the Commission had found to be dangerously threatened on account of the increased operating costs and declining revenues of the railroads. The increases in Florida intrastate rates as thereafter required by the Commission were likewise directed to the preservation of the national railway transportation system, of which the railroads serving the State of Florida constitute an important part. If the Commission, in dealing alike with the interstate rates and the intrastate rates in Florida, is without authority to consider railroad revenues in their entirety, including both freight and passenger revenues, it must follow inevitably that the Commission will be powerless to carry out the mandate of the statute.[12] And if continuing

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[12] In *Sixty-Fifth Annual Report of the Interstate Commerce Commission* (Nov. 1, 1951) it was stated (p. 5):

> "The drain which the passenger-train service deficit makes on freight revenues was an important factor in our decision in Ex Parte No. 175, above, as it has been in other revenue proceedings."

It was further stated (p. 41):

> "The deficit in passenger-service revenues of class I railroads, computed from carrier reports on the basis of our prescribed formula, declined from $649.6 million in 1949 to $508.5 million in 1950. The carriers' 1950 passenger-service revenues were augmented, however, by about $149,000,000 of retroactive mail pay, $107,000,000 of which was applicable to the period February 19, 1947–December 31, 1949, and about $42,000,000 to the calendar year 1950. If the $107,000,000 is deducted from the 1950 revenues from passenger and allied services, the deficit for those services would amount to $615.5 million for 1950. An adjusted figure for 1949 is not available. With few exceptions, and to varying degrees, all railroads report deficits in these operations."

and unavoidable losses from passenger service may not be offset by increases in freight rates, so long as neither the interstate nor intrastate rates are raised to an unreasonably high level, the continued maintenance of an adequate national transportation system may well become a practical impossibility. Any railroad might conceivably become bankrupt because of irremovable passenger deficits although it could be saved by the application of freight rates which, although higher than they otherwise might be, can not be said to be unfair or unreasonable. Such question of reasonableness is one for determination by the Commission and upon this question the Commission's ultimate findings herein, upon the evidence of record,[13] contain the following as Finding No. 3 (*Increases in Florida Intrastate Rates*, 278 I. C. C., p. 72, R. 118):

> "3. That the present interstate freight rates and charges within Florida and between points in Florida and points in other States are just and reasonable, including those proposed within Florida in I. and S. No. 5640, to the extent above found just and reasonable; *and that intrastate rates, charges, and minimum weights herein approved will not exceed a just and reasonable level.*" (Emphasis supplied.)

3.

Appellants' contention is unsupported by either Commission or court decisions.

The decisions of this Court in such cases as *Northern Pacific Ry. Co.* v. *North Dakota*, 236 U. S. 585, and *Norfolk & W. Ry. Co.* v. *Conley*, 236 U. S. 605, cited and relied upon by appellants, clearly lend no support to appellants' contention here. Those cases (decided in 1915) both related to the

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[13] Further reference to the evidence relating particularly to the matter of reasonableness is made at pp. 41-44, *infra*.

alleged confiscatory nature of transportation charges prescribed by state authority. In the *Northern Pacific* case the Court, adhering to well established principles, held that the state of North Dakota could not justify the imposition by statute of charges for the transportation of lignite coal, such charges having been shown to yield revenue less than or barely equal to the computed cost of the transportation of that traffic, upon the theory that the railroad was deriving adequate revenues from its intrastate business as a whole. As was said in the opinion by Mr. Justice (later Chief Justice) Hughes, 236 U. S., at p. 599:

> "Frequently, attacks upon state rates have raised the question as to the profitableness of the entire intrastate business under the state's requirements. But the decisions in this class of cases (which we have cited in the margin) furnish no ground for saying that the state may set apart a commodity or a special class of traffic and impose upon it any rate it pleases, provided only that the return from the entire intrastate business is adequate."

The Court further stated (p. 604):

> "With respect to particular rates, it is recognized that there is a wide field of legislative discretion, permitting variety and classification, and hence the mere details of what appears to be a reasonable scheme of rates, or a tariff or schedule affording substantial compensation, are not subject to judicial review. But this legislative power cannot be regarded as being without limit. The constitutional guaranty protects the carrier from arbitrary action and from the appropriation of its property to public purposes outside the undertaking assumed; and where it is established that a commodity, or a class of traffic, has been segregated and a rate imposed which would compel the carrier to transport it for less than the proper cost of transportation, or virtually at cost, and thus the carrier would be denied a reasonable reward for its service after taking into account the entire

traffic to which the rate applies, it must be concluded that the state has exceeded its authority."

In the *Norfolk & Western case*, which followed the *Northern Pacific case* and was decided on the same day, the Court similarly held invalid a statute of West Virginia fixing a passenger fare of 2 cents per mile, as to which it appeared that the revenue derived therefrom would be less than the cost of conducting the passenger transportation. The Court said (236 U. S., at p. 609):

> "The passenger traffic is one of the main departments of the company's business; it has its separate equipment, its separate organiaztion and management, and, of necessity, its own rates. In making a reasonable adjustment of the carrier's charges, the state is under no obligation to secure the same rate of return from each of the two principal departments of business, passenger and freight; but the state may not select either of these departments for arbitrary control. Thus, it would not be contended that the state might require passengers to be carried for nothing, or that it could justify such action by placing upon the shippers of goods the burden of excessive charges in order to supply an adequate return for the carrier's entire service. And, on the same principle, it would also appear to be outside the field of reasonable adjustment that the state should demand the carriage of passengers at a rate so low that it would not defray the cost of their transportation, when the entire traffic under the rate was considered, or would provide only a nominal reward in addition to cost. That fact, satisfactorily proved, would be sufficient to rebut the presumption of reasonableness; and if in any case it could be said that there existed other criteria by reference to which the rate could still be supported as a reasonable one for the transportation in question, it would be necessary to cause this to appear. Northern P. R. Co. v. North Dakota, supra, and cases there cited."

No confiscation is alleged in the case here before the Court, which relates solely to questions arising under sec-

tion 13(3)(4) of the Interstate Commerce Act. Moreover, there has been no showing here that the Commission arbitrarily directed a raising of Florida intrastate freight rates to an unreasonably high level. On the contrary, the Commission upon due consideration of the evidence affirmatively found and stated that the Florida intrastate freight rates as a whole were "abnormally low" and that if increased by the amounts directed in the order such rates as so increased would not exceed "a just and reasonable level" (278 I. C. C., p. 72, R. 118).

It may be mentioned also that the cases above referred to were both decided long prior to the 1940 declaration by Congress of the "National Transportation Policy" or the enactment of section 15a(2) of the Interstate Commerce Act in its present form.

Appellants have asserted that the question here raised has never heretofore been presented directly for decision by this Court. It is none the less true, however, that the Court has repeatedly upheld orders of the Commission under section 13(4) similarly directing the raising of intrastate rates where state commissions had refused to sanction increases following authorized general interstate increases, such interstate increases having been determined upon a consideration of revenue needs of the railroads from operations as a whole, including both freight and passenger operations.

In *United States* v. *Louisiana*, 290 U. S. 70, the Court upheld an order of the Commission under section 13(4) whereby it had directed a general raising of the intrastate freight rates of the railroads operating in Louisiana by amounts corresponding with general interstate rate increases theretofore authorized in *Fifteen Percent Case, 1931*, 178 I. C. C. 539, 179 I. C. C. 215. In that proceeding, as in Ex Parte No. 162 and Ex Parte No. 166, the Commission in determining the amounts of the interstate increases had considered the revenue needs of the railroads from the

standpoint of all operations. The Commission particularly mentioned the passenger service operating losses which the railroads were sustaining at that time, it being stated in the first report (178 I. C. C., at p. 584):

> "Foremost among the problems to be solved is that presented by the passenger service. Broadly speaking, this service for the country as a whole fails by something like $450,000,000 annually to contributing its proportionate share toward taxes and return on railroad property. The close similarity of this figure to the amount of money which the carriers estimated that they would realize from the 15 per cent increase, if no loss of traffic resulted, is striking. *In other words, if the carriers were able to conduct the passenger business as profitably as the freight business, they would even now, under adversity in a period of great depression, be earning enough to stabilize their credit situation. The freight business as a whole is doing reasonably well, present conditions considered.*" (Emphasis supplied.)

The situation thus described by the Commission is strikingly similar to that of the Florida railroads as disclosed upon this record.

In *Wisconsin Railroad Comm.* v. *Chicago, B. & Q. R. Co.*, 257 U. S. 563, the Commission had ordered a raising of the intrastate passenger fares of Wisconsin railroads following the refusal of the Wisconsin Railroad Commission to permit an increase corresponding with a general interstate increase theretofore authorized and made effective in interstate fares. In upholding the order upon the ground of undue discrimination against interstate commerce under section 13(4) the Court stated (p. 565):

> "The Commission had investigated the interstate rates of carriers in the United States, in a proceeding known as Ex parte 74, Increased Rates, 58 Inters. Com. Rep. 220, for the purpose of complying with section 15a of the Interstate Commerce Act, as amended by section

422 of the Transportation Act of 1920 (41 Stat. at L. 488). That section requires that the Commission so adjust rates that the revenues of the carriers shall enable them as a whole or by groups *to earn a fixed net income on their railway property.*" (Emphasis supplied.)

The Court also observed that "twenty per cent of the gross freight receipts of the railroads of the country are from intrastate traffic, and 50 per cent of the passenger receipts" (257 U. S. at p. 585).

Similarly, in *New York* v. *United States*, 257 U. S. 591, the Court upheld an order of the Commission whereby it had directed a general raising of intrastate passenger fares in the State of New York following the refusal of the state commission to permit increases corresponding with the interstate increases theretofore authorized in Ex Parte 74, *Increased Rates, 1920*, 58 I. C. C. 220.

Appellants have cited no decision of either the Commission or the courts which sustains their contention here. As we have pointed out above the Commission, in recognition of changed conditions brought about by subsequent amendments of the governing statute, has long since felt compelled to reconsider conclusions stated in the early *Five Per Cent Case*, 31 I. C. C. 351 (July 29, 1914) cited and relied upon by appellants.

IV

The Commission Made All Findings Appropriate and Necessary for the Support of the Order and Such Findings Are Amply Supported by Evidence.

The ultimate findings of the Commission are set out in the report, which is made a part of the order, and are quoted in full below (278 I. C. C. at pp. 72-74, R. 118):

"Upon the record before us, we find and conclude:

"1. That the interstate transit rates, charges, minimum weights, and rules proposed in I. and S. No. 5646

are just and reasonable, except the proposed minimum of 44,000 pounds from February 1 to September 30. We find that a just and reasonable minimum for that period should not exceed 42,000 pounds.

"In No. 30140, we further find—

"2. That the transportation conditions incident to the intrastate transportation of freight in Florida are not more favorable and such conditions in the Florida peninsula are somewhat less favorable than those (1) within southern territory and (2) between Florida and interstate points.

"3. That the present interstate freight rates and charges within Florida and between points in Florida and points in other States are just and reasonable, including those proposed within Florida in I. and S. No. 5646, to the extent above found just and reasonable; and that intrastate rates, charges, and minimum weights herein approved will not exceed a just and reasonable level.

"4. That there is active competition between localities engaged in interstate commerce between points in Florida and points in other southern States, on the one hand, and localities engaged in intrastate commerce in Florida, on the other hand, and that this competition extends for all practical purposes throughout the entire State of Florida and to class and commodity traffic generally, but not including sugarcane to the mill, molasses, and, for short hauls, mixed fertilizer and a few other commodities.

"5. That the Florida intrastate rates, charges, and minimum weights, which are below the level herein authorized, are abnormally low and are not contributing their fair share to the revenues required by respondents to enable them to render adequate and efficient service and to operate profitably, and thereby accomplish the purpose of the Interstate Commerce Act, and as set forth in the national transportation policy declared by the Congress, to develop and preserve a national transportation system adequate to meet the needs of the commerce of the United States, of the postal service, and of the national defense; and

that the burden thus cast upon interstate commerce is undue to the extent that these intrastate rates and charges are less than they would be on the basis herein approved.

"6. That the establishment of intrastate rates and charges increased sufficiently to equal the level herein approved will substantially increase respondents' revenues therefrom, and will constitute not more than a fair proportion of respondents' total income, not taking into consideration the Ex Parte No. 168 increases.

"7. That the maintenance of intrastate rates and charges within Florida on bases lower than those herein approved causes, and in the future will cause, (1) in all instances, unjust discrimination against interstate commerce, (2) in nearly all instances, undue preference of and advantage to localities in intrastate commerce, and undue prejudice to localities in interstate commerce; and (3) undue and unreasonable advantage and preference to intrastate shippers of cement, particularly those at Tampa, Fla., and undue prejudice to interstate shippers, especially those at Clinchfield, Ga.

"8. That this unjust discrimination and undue prejudice should be removed by establishing intrastate rates and charges between points in Florida which will reflect the same increases as are, and for the future may be, maintained by respondents on like interstate traffic to and from Florida, and within Florida under our authorizations in Ex Parte No. 162 and Ex Parte No. 166, modified as herein indicated and as proposed before the Florida Commission in proceedings referred to herein: provided, that, under these findings, (1) on sugarcane, the present Florida intrastate transit rates should be increased to reflect the Ex Parte No. 162 and Ex Parte No. 166 increases but the minimum weights thereon should be the same as the minima authorized in I. and S. No. 5646, and the present high unused Florida intrastate nontransit rates should not be increased, except as necessary to observe as a minimum the Florida intrastate transit rates increased as herein authorized; (2) that on wastewood, the increased intrastate rates, mini-

mum 40,000 pounds, authorized herein, shall alternate with intrastate rates, minimum 60,000 pounds, which latter rates shall not exceed the interstate rates, minimum 60,000 pounds, applicable, from August 21, 1948, to, but not including, January 11, 1949, the effective date of the initial interim increases authorized in Ex Parte No. 168, for corresponding distances from Coast Line stations in Florida to Brunswick, Ga.; (3) that on pulpwood, no increase shall be made in Florida joint-line charges nor in Florida single-line distance rates which would cause those rates or charges to exceed the level of the corresponding rates contemporaneously maintained on interstate traffic during the foregoing period from or to Florida points under the Roanoke Rapids scale; (4) that on fertilizers and fertilizer materials, no increase shall be made in Florida single-line intrastate rates which will cause such rates to exceed the level of the single-line intrastate rates maintained by the Florida East Coast Railway immediately prior to January 11, 1949, the effective date of the initial interim increases authorized in Ex Parte No. 168; (5) that no intrastate rate or charge shall be increased so that it will exceed the lowest level of the corresponding rates or charges contemporaneously maintained generally on interstate traffic to and from Florida points in the period from August 21, 1948, to, but not including, January 11, 1949; and (6) that the foregoing provisions shall be construed so as to make due allowance for differences in minimum weights and for the Florida peninsular arbitraries where applicable."

There is then embodied in the report the following saving clause (278 I.C.C. p. 74, R. 120):

"These findings are without prejudice to the right of the authorities of the State of Florida, or any other interested party, to apply for a modification thereof as to any specific intrastate rates or charges on the ground that they are not related to the interstate rates or charges on like traffic in such a way as to contravene the provisions of the Interstate Commerce Act."

It should here be pointed out that the Commission did not, as appellants say on brief (Appellants' brief p. 16), require a raising of the Florida intrastate rates to the level of the interstate rates. On the contrary, the Commission merely directed that the intrastate rates should be increased by amounts corresponding with the increases theretofore authorized and made effective in the interstate rates applicable to, from or between points in Florida (Finding No. 8).

It may be noted also that in Finding No. 8 the Commission dealt separately with the intrastate rates on certain individual commodities, including sugarcane, pulpwood and several others, and specifically designated the manner and extent to which those particular rates should be increased.

1

The Commission's finding that the intrastate rates, as increased, would not be in excess of a just and reasonable level is supported by evidence.

In the report (278 I.C.C., pp. 45-60, inc., R. 86-104) the Commission dealt separately and extensively with class rates and rates on the various individual commodities which move in volume in Florida, such as agricultural limestone, fertilizer and fertilizer materials, logs, lumber and related articles, phosphate rock, pulpwood, resinous wastewood, sugarcane and others; pointed out the numerous instances in which the interstate rates to and from Florida and elsewhere in the south had been either prescribed or approved by the Commission in other cases and the extent to which the Florida intrastate rates were lower than such prescribed or approved interstate rates; and mentioned numerous comparisons with other rates applicable on the same or similar commodities—all as supporting the ultimate finding:

"3. That the present interstate freight rates and charges within Florida and between points in Florida

and points in other States are just and reasonable, including those proposed within Florida in I. and S. No. 5646, to the extent above found just and reasonable; and that intrastate rates, charges, and minimum weights herein approved will not exceed a just and reasonable level."

It was also stated, at page 59 (R. 102):

"With respect to intrastate rates which with the increases sought by respondents will not be on a higher level than the corresponding interstate rates, the previous discussion herein, relating to the more important commodities, is fairly representative of the relative situation, intrastate compared with interstate, disclosed in the record concerning numerous commodities which move under the rates in issue. Exhibits show in detail the intrastate rates on practically every commodity of any importance moving in Florida as compared with interstate rates for comparable hauls of the same commodities.

* * * * * * *

"To deal with each of the other commodities separately is not essential. It will suffice to find that, so far as appears on this record, the intrastate rates, with the addition of the increases sought on these commodities, will in no instance be on a higher level than the corresponding interstate rates giving due consideration to differences in minima and to the peninsular arbitraries where applicable." [14]

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[14] In *Southern Class Rate Investigation*, 100 I.C.C. 513, 128 I.C.C. 642, as well as numerous decisions dealing with rates on particular commodities, the Commission, in recognition of the relatively high cost of railroad operations in what is commonly known as the Florida peninsula, i. e., that portion of the state which lies south of the Jacksonville-Chattahoochee line of the Seaboard Air Line R.R., has authorized the use of so-called peninsula "arbitraries", the amounts of which are to be added to the basic mileage scales of rates in constructing rates to and from the peninsula and determined by the length of the haul in the peninsula. The Florida Commission has likewise authorized the inclusion of such "arbitraries" in constructing intrastate rates. In the case of numerous rates, both interstate and intrastate, the rail carriers have from time to time "waived" such arbi-

The Commission's findings as to reasonableness are amply supported by evidence, including Exhibit No. 11 (statement of testimony in narrative form, R. 271, 610), Exhibit No. 12 (R. 271, 614), and Exhibits Nos. 13 and 15-21 (R. 272, 682, 685-690). They relate to practically every commodity of which there is an intrastate movement of any consequence in Florida. The Commission was not required to deal separately with each and every rate among the thousands of rates applying between points in Florida. *Georgia Pub. Serv. Commission* v. *United States*, 283 U. S. 765; *United States* v. *Louisiana*, 290 U. S. 70.

In *United States* v. *Louisiana*, 290 U. S., at page 78, the Court, speaking through Mr. Justice Stone, stated:

> "The administrative difficulties which would preclude performance of the duty imposed by section 15a if the Commission were required to find that each individual rate prescribed is just and reasonable, would similarly prevent compliance with that under section 13(4). Since neither can be performed effectively without performance of the other, the standard of reasonableness to which the Commission must conform is necessarily the same under both, and that implies that under section 13 (4), as under section 15a(2), reasonable latitude must be given for modification of particular rates found to be unreasonable.
>
> "The case of the Louisiana rates was not alone before

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traries on account of motor-truck and water-line competition. With respect to those rates which still contain peninsula arbitraries, the Commission stated as follows in its report (278 I.C.C., p. 62, R. 106):

> "These arbitraries were prescribed on interstate class and commodity traffic in numerous interstate proceedings and, in authorizing the general increases under Ex Parte No. 162 and Ex Parte No. 166, no exceptions were made with respect to the numerous rates which were subject thereto. They have been discussed herein at length under the subject of class rates. *The record does not warrant any treatment in regard to rates subject to the peninsular arbitraries different from the treatment in regard to other rates here in issue. The situation in this respect is no different within Florida than from or to Florida.*" (Emphasis supplied.)

the Commission, and it should not be treated as though it were. A number of other states, contesting, in the aggregate, a wide range of rates, were heard at the same time. Had the Commission been required to go into the circumstances of each item with particularity the purpose of its original order would have been defeated. It sufficed that the Commission found that Louisiana showed nothing in the circumstances of its agriculture and industry or its traffic conditions so different from the rest of the country as to lead to the conclusion that the intrastate rates, raised to the reasonable general interstate level, would not themselves be reasonable; and that it saved the rights of interested parties to test the reasonableness of any individual rate."

In both Ex Parte 162 (266 I.C.C., at p. 615) and Ex Parte 166 (270 I.C.C., p. 97) the Commission had found that the interstate rates, to and from Florida and elsewhere within the south, when increased by the amounts of the authorized general increases would not be in excess of a reasonable general rate level. In its report herein the Commission, as we have shown, undertook merely to require similar general increases in the intrastate rates in Florida, which it had found and declared to be "abnormally low" (278 I.C.C., p. 72). It also "saved the rights of interested parties to test the reasonableness of any individual rate."

2

The Commission's findings relating to railroad revenues meet all requirements heretofore announced by this Court in proceedings arising under Section 13(3)(4).

In apparent reliance upon expressions appearing in *North Carolina* v. *United States*, 325 U. S. 507, appellants assert that the Commission arbitrarily failed and neglected to make appropriate findings as to what contribution from intrastate traffic would constitute a fair proportion of the railroads'

total income; as to what amount of revenue was required to enable the railroads to operate efficiently; or a finding that the Florida intrastate rates were less than compensatory or insufficient to cover the full cost of service.

In the *North Carolina case* an order whereby the Commission had directed a raising of the intrastate passenger coach fares of railroads operating in North Carolina was set aside upon the ground, as stated in the opinion, that the order was not shown to be "based on adequate findings, supported by evidence" (325 U. S. p. 520). But the facts of that case are very different from the facts disclosed upon this record. In the *North Carolina case* the Court, in the opinion by Mr. Justice Black, particularly pointed out (325 U. S. p. 519) that at that time the four North Carolina railroads "were carrying more passengers and more freight, and were more prosperous than they had ever been in their history"; that they were "in the highest excess profit tax brackets, and that somewhere between 80 and 90% of all their profits were subject to be paid for federal taxes"; and that a great revenue increase had "transformed a 1936 $16,426.00 deficit of six North Carolina roads, including the four here involved, into a 1942 $26,699,988.00 profit", most of which was shown to have been derived from passenger revenues. The Court then stated:

> "All of this evidence and much more to which we might advert was sufficient to show that the Commission might have found, had it made any findings on the subject at all, that a 1.65 cents rate for these four North Carolina railroads would have been a fair coach passenger contribution to revenues required to enable them to operate profitably and efficiently. But it made no findings on this subject at all. The purpose of the National Transportation Law is to assure railroads a fair net operating income and no more. Dayton-Goose Creek R. Co. v. United States, 263 U. S. 456, 68 L. Ed. 388, 44 S. Ct. 169, 33 A.L.R. 472."

The Court's expressions concerning the required findings with respect to "discrimination against interstate commerce" are to be considered in the light of the circumstances above described, including the fact that the North Carolina railroads were at that time *in no need of any increase in revenues from any source* so far as the purposes of the national transportation law were concerned.

The record here discloses no such situation in the case of the Florida railroads. With reference to these particular railroads the Commission found, on the contrary, that they were *in dire need* of additional revenue and that their need was even greater than that of other southern railroads generally. Upon this subject the report of the Commission contains the following (278 I.C.C. at p. 65, R. 109):

> "* * * In 1948, the rate of return earned by the principal respondents herein on their property investment, including materials and supplies and cash as of the close of the periods for which computed, averaged 2.29 percent and on such investment less depreciation, 2.91 percent. In 1946, the corresponding figures for the Coast Line were 1.28 and 1.62 percent; those for the Seaboard were 3.91 and 4.91 percent; and those for the East Coast were 3.87 and 4.35 percent, respectively.
>
> "In 1947, without the general increases as made on interstate traffic and on most of the intrastate traffic, a net railway operating income of $13,383,693 earned by these three respondents would have been converted into a deficit of $16,871,215. As stated, the revenue loss as estimated by respondents because of the failure to authorize the increases herein sought is $915,325 a year. Obviously, the great preponderance of this severe loss will fall upon the three principal respondents. The figures include no estimated revenue loss on certain smaller roads in Florida. The estimated loss would have been increased accordingly if such roads had been included. During the first 4 months of 1949, as compared with the corresponding months in 1948, the railway operating income of the principal respondents declined

10 percent, as compared with 7.6 percent for other carriers in the southern region. During this period Federal income taxes of the Coast Line and Seaboard increased $513,000."

Exhibit No. 1 (Schedules 1, 2 and 3, R. 573-575, 201), introduced before the Commission, displays the results of operations over a period of years of the three principal Florida railroads, Atlantic Coast Line, Seaboard Air Line and Florida East Coast Railway, as well as such roads as the Louisville & Nashville, St. Louis-San Francisco Railway and Georgia Southern & Florida Railway, each of which operates a relatively small amount of mileage in Florida. It shows that the Atlantic Coast Line, for example, a carrier which was operating 1,942 miles of road in that state, earned in 1948 a return of *only 1.25 per cent* on its property investment and *only 1.6 per cent* on such investment less depreciation. The Florida East Coast Railway, whose lines lie wholly within Florida, had corresponding rates of return during the same year of only *7.68 per cent* and *4.90 per cent*, respectively. As the Commission stated, the combined rates of return of the three principal Florida roads in that year were 2.29 per cent and 2.91 per cent, respectively. There is shown also the extent to which the earnings of these roads had been rapidly declining (Ex. No. 1, Sch. 42-44, R. 604-6); that these roads would have sustained severe deficits in both net railway operating income and net income in 1947 and 1948 but for the increases theretofore authorized by the Commission in interstate rates and by the various state commissions in intrastate rates (Ex. No. 1, Sch. 18, R. 587); and it was further shown that in 1948 the railroads in the south as a whole, excluding the A.C.L., S.A.L. and F.E.C. Ry., had rates of return of 3.95 per cent on total investment and 4.97 per cent on investment less depreciation, as contrasted with the combined rates of return of the three Flor-

ida roads of only 2.29 per cent and 2.91 per cent, respectively (Ex. No. 2, R. 607, 212).

In the *North Carolina case* the Court also expressed the view that the Commission had erroneously "relied on the mere existence of a disparity between what it said was a reasonable interstate rate and the intrastate rate fixed by North Carolina" (325 U.S., p. 516). The Court further observed that "there is reasonable doubt as to whether the Commission had ever fixed 2.2 cents as the only reasonable interstate rate"; that the Commission had found that the 1936 coach fare of 1.65 cents would be adequate and "neither unreasonable nor unlawful" and had thereafter made no finding, based on evidence, that it had ceased to be such; and that even assuming that the Commission had previously made a valid 2.2 cents per mile general order broadly applicable to all railroads "it does not follow that such a general order must permanently stand as to each and every separate railroad or railroad system" (325 U.S., pp. 517, 518).

Here, on the other hand, the Commission has made a definite finding, upon due consideration of voluminous evidence submitted by shippers, shipper organizations and railroads, that the interstate rates as in effect to and from Florida were just and reasonable and that the intrastate rates, with the prescribed increases, would not exceed "a just and reasonable level." It has also preserved the right of "the authorities of the State of Florida or any other interested party" to secure an appropriate modification of the findings as to any specific intrastate rates or charges.

Appellants apparently take the view that before the Commission could order a raising of the intrastate rates of the Florida railroads it was essential that it undertake to determine and set out the precise amount of revenue from their intrastate traffic which would constitute a fair

proportionate share of the total income of these railroads. They say further that there is no evidence upon which the Commission could make such a determination since there has been no attempt herein to show a separation of operating expenses and property values assignable to interstate and intrastate operations, respectively (Appellants' brief, p. 29).

We find nothing in either the *North Carolina case* or other decisions of this Court which supports any such meticulous requirements. Experienced railroad accounting officers have testified repeatedly, in this and other cases before the Commission (R. 204), that there is no known way of segregating either railroad operating expenses or railroad property values according to intrastate and interstate operations. Both interstate and intrastate shipments are handled over the same lines of railroad, with the same locomotives and cars, by the same train crews and other employees, and both use the same stations and other railroad facilities. Regardless of what may be the requirements where confiscation has been alleged with respect to state-made rates, both the Commission and the courts have declared that in proceedings arising under section 13(3)(4) of the Act no such separation is necessary.

In *Increases in Alabama Freight Rates and Charges*, 274 I.C.C. 439, 463, the Commission stated:

> "Protestants contend that respondents' evidence does not warrant affirmative findings under section 13(4), chiefly because of the absence of any showing upon which we can determine with exactness the value of all of respondents' properties used for intrastate transportation and the costs of performing such transportation. Apparently they believe that respondents must show the out-of-pocket costs of intrastate freight service segregated from the interstate costs, together with a segregated valuation of carrier property used for intrastate freight transportation. Where,

as is the case here, the intrastate and the interstate traffic move under substantially similar conditions and the expenses of handling the two classes of traffic are inextricably woven together, such a meticulous showing would serve no useful purpose. See *Florida* v. *United States*, 292 U.S. 1, 9; *Illinois Commerce Comm.* v. *United States*, 292 U.S. 474. We find nothing to the contrary in *North Carolina* v. *United States*, 325 U.S. 507."

To the same effect is what was said in the Commission's report herein, 278 I.C.C. at p. 66 (R. 111).

In *Illinois Commerce Commission* v. *United States*, 292 U.S. 474, it was said in the opinion by Mr. Justice Stone, at p. 483:

"Specific objections to the sufficiency of the findings, so far as they are not already disposed of by what has been said, are that there is no finding that the intrastate rates, before the increase, were less than maximum reasonable rates, and there was no finding which separated interstate and intrastate property, revenues and expenses of the carriers so as to make it possible to compare revenues with cost for the two classes of traffic considered separately. But these objections, and others which we need not stop to consider in detail, leave out of account the nature of the traffic and the significance of the principal and subsidiary findings showing that the conditions throughout the district were substantially the same for both classes of traffic, which were handled in the same manner. The inquiry in both proceedings was directed to the commerce of the district as a unit. The decision in the first proceeding, that the increase in interstate rates was reasonable, was made in the hope that the state commissions would bring intrastate rates into harmony. When they failed to do so, the Commission reaffirmed its finding that the new interstate rates were reasonable and found that the intrastate rates must be raised in order that the intrastate traffic may bear its fair

share of the revenue burden. It is plain from the nature of the inquiry that the rate level, to which both classes of traffic were raised, was found reasonable on the basis of the traffic as a whole. *Where the conditions under which interstate and intrastate traffic move are found to be substantially the same with respect to all factors bearing on the reasonableness of the rate, and the two classes are shown to be intimately bound together, there is no occasion to deal with the reasonableness of the intrastate rates more specifically, or to separate intrastate and interstate costs and revenues.* Compare American Exp. Co. v. South Dakota, 244 U.S. 617, 61 L. ed. 1352, 37 S. Ct. 656, P.U.R. 1917F, 45; United States v. Louisiana, 290 U.S. 70, ante, 181, 54 S. Ct. 28, supra; Florida v. United States, No. 342 (292 U.S. 1, ante, 1077, 54 S. Ct. 603) supra." (Emphasis supplied.)

It may be observed also that the return to which the Court in the *North Carolina case* said that the intrastate traffic should contribute fairly was stated to be a fair return upon the value of the property devoted to the transportation service "both interstate and intrastate" (325 U.S., p. 520). And in *State of Illinois* v. *United States*, 101 F. Supp. 36 (U. S. District Court, N.D. Illinois,—affirmed by *per curiam* decision, February 4, 1952, 342 U.S. 930) the specially constituted district court upheld an order whereby the Commission had directed a raising of the suburban passenger fares of the Illinois Central Railroad in Chicago and vicinity, the court having found (Conclusion of Law No. 3, at p. 46) that the commutation fares

> "* * * are not producing their fair share of the earnings required to enable petitioner to meet its maintenance and operating costs and to yield a fair return on the value of the property devoted to the transportation service, *both interstate and intrastate* * * *" (Emphasis supplied).

Should the Commission be required to ascertain and set out the precise amount of revenue which might be said to represent "the fair proportionate share" to be contributed by the intrastate traffic it would be confronted with an impossible undertaking, which might well serve to defeat altogether the performance of its functions and duties in cases of this kind. Moreover, any such determination would necessarily involve numerous purely arbitrary apportionments. In the report herein the Commission stated (278 I. C. C., p. 67, R. 112):

> "Our power to require an increase in intrastate rates depends upon whether intrastate traffic is contributing its fair share of the earnings required to meet maintenance and operating costs and to yield a fair return on the value of the property devoted to the transportation service, both interstate and intrastate. Respondents are not seeking an increase in the intrastate revenue sufficient to give them a fair return on the value of their property devoted to freight service but merely to secure a contribution to maintenance and operating costs, including taxes, more nearly proportionate to the contribution thereto made prior to the increases in Ex Parte No. 162 and Ex Parte No. 166. We may properly use such prior contribution as a valid criterion of fairness, in the light of which the Florida intrastate rates and charges in 1947 and 1948 afforded a disproportionately small share of the revenue required to meet the costs of the service in Florida. This condition has been aggravated by the continuing rise in operating expenses following Ex Parte No. 162 and Ex Parte No. 166, which impelled us to authorize additional increases in freight rates and charges in Ex Parte No. 168."

Since there has been no showing here that the required increases in the Florida intrastate rates would enable these Florida railroads to earn *anything even approaching a fair return*, there was clearly no occasion or need for the Commission to make specific findings as to what amount of reve-

nue would be needed for such purpose. And so far as concerns the question as to what would constitute a "fair proportionate share" to be contributed by the intrastate traffic the Commission, as quoted above, found that such proportionate contribution might fairly be measured *by the amount of the contribution that had been made by the Florida intrastate traffic prior to the Ex Parte No. 162 and Ex Parte No. 166 increases.* Here the Commission has undertaken to do no more than require Florida intrastate traffic to contribute the additional revenue, needed by the Florida railroads as a part of the national transportation system, which it had fully anticipated that Florida, like all other states, would contribute when the amounts of the increases to be made in the interstate rates were determined and authorized in Ex Parte No. 162 and Ex Parte No. 166.

Appellants, however, say that the Commission was not justified in using Florida's contribution prior to the general interstate increases as a valid criterion of fairness (Appellants' brief, p. 36). In *State of Montana* v. *United States*, 2 F. Supp. 448 (affirmed, *per curiam*, 290 U. S. 593), a specially constituted district court, District of Montana, upheld an order of the Commission directing a general raising of intrastate rates in Montana following nationwide increases theretofore authorized in interstate rates in Ex Parte No. 123, *Fifteen Percent Case, 1931*, 178 I. C. C. 539, 179 I. C. C. 215. Recognizing that both the interstate and intrastate rates are subject to regulatory authorities, the court stated (2 F. Supp., p. 450):

> "By reason of the presumption of regularity in official duty theretofore performed, it is to be assumed, even as it is unquestioned, that at the time of interstate increase ordered interstate rates and intrastate rates were in just relationship, a harmonious whole, each contributing its fair proportion of total revenues in discharge of their common obligation to adequately

maintain the railroads and service in common used by interstate and intrastate commerce.

"Increase interstate destroyed this status, resulted in discrimination against interstate commerce, and obviously, if like increase intrastate to restore the former status would produce more revenue, the discrimination was unjust and thus to be removed. Wisconsin State Rate Case, 257 U. S. 563, 42 S. Ct. 232, 66 L. Ed. 371, 22 A. L. R. 1086."

Very recently, in *State of Montana, et al.* v. *United States, et al.* (July 24, 1952; August 13, 1952 on further hearing—not yet reported)[15] a special district court for the Montana District has again considered this question in a case involving the 8 percent increase for the west as authorized in Ex Parte No. 168, *Increased Freight Rates, 1948*, 276 I. C. C. 9. Although the court concluded that the Commission's order should be set aside upon other grounds, it expressly rejected the contention, again advanced by the state, that upon the question as to what would constitute the "fair proportionate share" to be contributed by the intrastate traffic the Commission was not justified in using as a criterion of fairness the proportionate amount which such traffic had contributed prior to the general rate increases. After reviewing at length the opinions of this Court in the *North Carolina case*, *Wisconsin Railroad Comm.* v. *Chicago, B. & Q. R. Co.*, and *Illinois Commerce Comm.* v. *United States*, *supra*, the court stated:

"We think that it is obvious that in the circumstances of this case, where segregation of intrastate costs is found to be impossible, there would be no way in which the Commission could exercise its statutory power to make an order which will require intrastate rates to contribute their fair share toward the revenue required to maintain an efficient railroad system, if

[15] Printed as an appendix to the brief of State of Montana, et al., *amici curiae*.

the method and procedure adopted by the Commission in this case is not permissible. *We do not think that anything said in the North Carolina case could have been intended to have the effect of requiring an impossibility.*

"We are also impressed with the argument made on behalf of the Commission that the 'just relationship' of interstate and intrastate rates mentioned in the opinion of Judge Bourquin in the three-Judge case previously cited may not only be supported by the presumption there mentioned, but that an inference to like effect may be drawn from the fact that for a considerable number of years intrastate rates subject to continuous regulation by the Board and interstate rates subject to continuous regulation by the Commission shook down and fell into a relationship each to the other, which was the result of both action and nonaction by shippers, Board and Commission." (Emphasis supplied.)

In *State of New York* v. *United States*, 98 F. Supp. 855, a specially constituted district court, D. New York, upheld an order of the Commission under Section 13(4) whereby it had directed a raising of the intrastate commutation fares in New York of the New York, New Haven & Hartford Railroad. The judgment was affirmed by this Court, *per curiam*, on November 26, 1951, although it was said in a dissenting expression by Mr. Justice Douglas that "the Commission made no findings as to what contribution from intrastate traffic would constitute a fair proportion of the railroad's total income" (*New York* v. *U. S.*, L. Ed. Adv. Op., Dec. 17, 1951, pp. 113, 114).

It can likewise not reasonably be assumed from what was said in the *North Carolina case* that the Court would expect the Commission, as prerequisite to the making of a valid order, to do the impossible by undertaking to determine and name the exact amount of revenue which the Florida railroads require in order to enable them to "operate efficiently." The railroads, of course, must be and are

operated efficiently, in times of depression as well as times of prosperity, but even though so operated their earnings, by reason of lack of traffic or unduly low rates, may fall to a level which threatens their ability to provide "adequate" transportation service within the meaning of Section 15(a) of the Act. If the term "efficiency" of operation is to be construed as conveying also the idea of "adequacy of service" it becomes important to note that the question of such adequacy covers a wide range. A railroad can always improve its service, if the necessary funds are available, by enlarging and modernizing its equipment supply and other facilities. But an attempt to define in any given instance the precise point at which "adequacy" of service is reached, with the view of naming the amount of revenue needed for the provision of such service, would plainly involve the vaguest sort of mere speculation.

Here the Commission has first determined and named the amounts of the general rate increases throughout the country which, in its judgment, would provide the additional revenue needed for the maintenance of the national transportation system of which the Florida railroads constitute a part. It has thereafter determined and set out the amounts of the increases in Florida intrastate rates that were needed in order that the Florida intrastate traffic should contribute fairly to that end. It has further found and stated what it considered *the measure* of such fair contribution, namely, the proportionate amount which the Florida intrastate traffic had been contributing in the past and prior to the increases authorized in Ex Parte No. 162 and Ex Parte No. 166. It has also affirmatively found that the burden cast upon interstate commerce by the prevailing intrastate rates was "undue to the extent that these intrastate rates and charges are less than they would be on the basis herein approved" (Finding No. 5, R. 119). We submit that such findings meet all reasonable and necessary re-

quirements here. As was said by Mr. Chief Justice Hughes in *Florida* v. *United States, supra* (292 U. S., p. 9):

> "The requirement of essential findings as to revenues *did not demand an impracticable exactness.* Losses through inadequate rates could be shown satisfactorily even though proof of the precise extent of such losses was not available. *Reasonable determinations were required and these were made.*" (Emphasis supplied.)

We do not understand that this Court has held, in either the *North Carolina case* or elsewhere, that before the Commission can order a raising of intrastate rates under section 13(4) it must first make a finding that such rates fail to cover the full cost of the service—in other words, are so low as to be actually confiscatory. The Court in the *North Carolina case* referred to certain language appearing in *Florida* v. *United States*, 292 U. S. 1, and the Court then observed that the Commission had failed, among other things, to "indicate that the North Carolina railroad rates here involved were less than compensatory or insufficient to cover the full cost of service." This, we submit, falls far short of a declaration by the Court that such a finding is essential to the support of an order. A requirement of that sort would plainly defeat the whole intent and purpose of section 13(4) and would reduce virtually to a state of impotency the power of the Commission under that section. The order here in question deals with the entire body of the intrastate freight rates in Florida, including hundreds of rates on different commodities, applicable between different points and in varying amounts. It would be utterly impracticable to show with respect to each such rate the full cost of the service and a requirement to that effect would defeat the power of the Commission to proceed in any case of this kind. Furthermore, such requirement would render section 13(4) wholly unnecessary since if actual confiscation can be shown the carriers have an adequate and complete

remedy by direct appeal to the courts. Section 13(4) relates to the removal of undue *discriminaton, preference or prejudice* brought about by reason of disparities between interstate and intrastate rates, and such unlawful discrimination, preference or prejudice may obviously be created although neither the intrastate rates nor the interstate rates are so low as to be non-compensatory or below the full cost of the service. The Court has time and time again upheld the validity of Commission orders under section 13(4) although no such element has been present.

United States v. *Louisiana*, 290 U. S. 70;
Illinois Comm. Comm. v. *United States*, 292 U. S. 474;
Ohio v. *United States*, 292 U. S. 498;
Alabama v. *United States*, 283 U. S. 776;
Georgia Pub. Serv. Comm. v. *United States*, 283 U. S. 765;
New York v. *United States*, 257 U. S. 591.

It may be added that there is nothing in *Florida* v. *United States*, 292 U. S. 1, which indicates that the Court's approval of the Commission's order therein attacked was conditioned upon a finding that the intrastate rates were so low as not to cover the full cost of the service. That case related to a scale of rates, known as the "Cummer scale", which was applicable for the movement of logs for distances not over 170 miles over the lines of the Atlantic Coast Line in Florida. The railroad had introduced before the Commission a cost study which tended to show that the revenue derived from these log rates was insufficient to defray the cost of the transportation. But both the report of the Commission and the opinion of the Court clearly show that the conclusions were in no way hinged primarily upon this matter of costs. The Commission had found and stated in its report (186 I. C. C., p. 187):

> "The record shows the low earnings of defendant; the low earnings on its log traffic as compared with its

> earnings on other low-grade commodities; the much lower earnings on its Florida log traffic than on its interstate log traffic; and the much lower level of the Cummer scale than of other scales applicable interstate and intrastate throughout the South. These facts and the cost evidence clearly warrant the conclusion that the traffic moving under the Cummer scale does not pay its 'fair proportionate share' of operation and maintenance alone."

The Court in its opinion (p. 9) mentioned that the Commission had found, among other things, that the defendant's revenue under the Cummer scale was "insufficient under all the circumstances and conditions to cover the full cost of service." The Court, however, immediately added that "the Commission was able to go further"; and the opinion then refers at length to other findings by the Commission, including a finding that the application of the Cummer scale, instead of the normal level of defendant's interstate log rates, was causing a revenue loss to the carrier of more than $100,000 per year, thus placing "a substantial burden upon defendant's interstate revenues." There can be little room for doubt that the Court's decision would have been the same either with or without a finding by the Commission as to costs.

We submit that expressions in the *North Carolina case* upon which appellants here rely are to be considered in the light of both (1) the essentially different facts of that proceeding, and (2) the conclusions, stated in the opinion, that are believed to constitute basically the grounds of the Court's decision. When so considered such expressions lend no support to appellants' contentions.

The Commission made adequate findings with respect to (1) the possible diversion of traffic from the railroads, and (2) the amount of additional revenue which the prescribed rate increases might be expected to yield.

Although the question appears not to have been raised directly on this appeal, it may be pointed out that the Commission additionally made adequate and appropriate findings with respect to (1) the possible diversion of traffic from the railroads to other transportation agencies, with resulting losses in railroad revenue; and (2) the amount of additional revenue which the prescribed rate increases might be expected to yield.

Upon the subject of possible diversion of traffic the report of the Commission contains the following (278 I. C. C., at p. 61, R. 105):

> "Many protesting shippers, and certain short line railroads, which depend largely upon the log and lumber traffic, contend that the intrastate traffic will not bear an additional increase. The evidence in support of this contention is not entirely convincing. As stated in *Increases in Alabama Freight Rates and Charges, supra*, at page 459, it might be, as is usually the case when extensive rate changes occur, that increases in the intrastate rates would result in some traffic losses to respondents by reason of diversion of tonnage to other competing forms of transportation, but the opinion of one or more protestants that the railroads would receive less aggregate revenue than they are now receiving on certain traffic is purely conjectural, and respondents' evidence is to the contrary."

As the report thus indicates, the Commission had before it and duly considered the testimony upon this subject of various shippers of particular commodities, such as lumber,

fertilizer, pulpwood and several other articles, who expressed the view that any increase in rail rates on those commodities would tend to cause an increase in the movement by truck. But the Commission's findings as above quoted are amply supported by the testimony of responsible and experienced traffic officers of the railroads (Ex. No. 11, p. 76, R. 679; Ex. No. 13, p. 1, R. 683) to the effect that although there might be some increase in the truck movement in particular instances such loss of the traffic by the railroads would be wholly insufficient to prevent the railroad revenue *in the aggregate*, even on these particular commodities, from being increased substantially. The Commission also found, as we have shown (*ante*, p. 46), that the rate increases authorized in Ex Parte No. 162, together with such increases as were thereafter authorized by the several state commissions, had not brought about such diversion of traffic as to prevent substantial increases in the revenue of the railroads; that if such rate increases had not been made effective the earnings of the three principal Florida railroads in 1947, meager as they were, would have been practically wiped out in their entirety; and that instead of a combined net railway operating income of $13,383,693 in that year they would have shown a *deficit* of close to $17,000,000. Exhibit No. 1 (Sch. 21, R. 587) shows that in 1948, during which year the additional Ex Parte No. 166 increases became effective from time to time, both interstate and intrastate to the extent authorized by the state commissions, these three roads without the benefit of such increases would have shown a deficit in net railway operating income of *$37,753,195*.

It can not be successfully asserted, therefore, that the Commission failed to give due consideration to the matter of diversion of traffic from the rail lines, or that its findings upon that subject are not supported by evidence.

Neither is there room for any contention that the Commission failed to set out with sufficient certainty the amount of the increase in revenue that might be expected to be derived from the required increases in rates. The Commission has here found (278 I.C.C., p. 73, R. 119):

> "6. That the establishment of intrastate rates and charges increased sufficiently to equal the level herein approved *will substantially increase respondents' revenues therefrom*, and will constitute not more than a fair proportion of respondents' total income, not taking into consideration the Ex Parte No. 168 increases."

The Commission further found, as we have shown (*ante*, p. 46), that on basis of the intrastate freight shipments actually handled by the railroads in 1948 the application of the prescribed rate increases would have meant an estimated difference and increase in railroad revenue of close to $1,000,000 per annum.

In *United States* v. *Louisiana, supra*, the Court said (290 U. S., at p. 80):

> "The objection that the finding of unjust discrimination by the intrastate rates against interstate commerce is unsupported by any finding that the increased rates would produce increased revenue is rested upon the statement, separated from its context in the Commission's report, 'we conclude that no positive finding in regard to the revenue outcome of the increases can be justified.' It is manifest that any finding of undue prejudice to interstate commerce, based upon the failure of prevailing intrastate rates to contribute their fair share to the support of a national transportation system, must necessarily rest upon a prediction that an increase of the intrastate rates will result in an increase of revenue, a prediction involving, especially since 1930, many elements of uncertainty. There are no formal requirements for the findings to be made by the Commis-

sion in this type of case, see Manufacturers R. Co. v. United States, 246 U. S. 467, 490, 62 L. Ed. 836, 848, 38 S. Ct. 383, and while the particular form in which they were cast here is not to be commended, *the report, read as a whole, sufficiently expresses the conclusion of the Commission, based upon supporting data, including estimates of experienced railroad traffic men, to which the report refers, that the probability of increased revenue was sufficiently great to make the increase of rates a reasonable exercise of sound managerial judgment. This, we think, meets the requirements of the statute.* (Emphasis supplied.)

And in the more recently decided "Barge Line Cases", *Alabama Great S. R. Co.* v. *United States* (Jan. 2, 1951), 340 U. S. 216, 95 L. Ed. 225, 228, it was said in the opinion by Mr. Justice Minton:

> "And 'the report, read as a whole, sufficiently expresses the conclusion of the Commission, based upon supporting data. . . .' *United States* v. *Louisiana*, 290 U. S. 70, 80, 78 L. Ed. 181, 188, 54 S. Ct. 28. Enough has been 'put of record to enable us to perform the limited task which is ours.' *Eastern-Central Motor Carriers Asso.* v. *United States*, 321 U. S. 194, 212, 88 L. Ed. 668, 680, 64 S. Ct. 499."

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The Commission also found that transportation conditions incident to intrastate transportation in Florida are not more favorable, and in the Florida peninsula are less favorable, as contrasted with interstate transportation to and from Florida and within the south generally, and such finding is supported by evidence.

Among the Commission's ultimate findings the following appears as Finding No. 2:

> "2. That the transportation conditions incident to the intrastate transportation of freight in Florida are

not more favorable and such conditions in the Florida peninsula are somewhat less favorable than those (1) within southern territory and (2) between Florida and interstate points."

Under the caption "Relative transportation conditions" the report of the Commission contains also the following (278 I.C.C., p. 63, R. 107):

"Responsible operating witnesses of the Seaboard and the Coast Line, which carriers have the longest mileage in Florida and also operate in other southern States, testified that purely operating conditions in Florida are no more favorable and even less favorable than those existing in adjacent States. For the Coast Line, Seaboard, and East Coast combined, (a) Florida operations, (b) system operations, and (c) operations of all carriers in the entire southern region, respectively, in 1947, the revenue tons per train-mile were 703.9, 724.2, and 843.1 tons; the revenue tons per locomotive mile-road were 688.7, 687.1, and 787.7 tons; the revenue tons per car-mile were 18.4, 17.3, and 19.4 tons; the freight operating ratios were 75.4, 75.6 and 72.3; and the passenger operating ratios were 112.8, 116, and 117.2.

"Intrastate and interstate traffic in Florida is intermingled and carried in the same trains, whether through or local, on main and branch lines, and the same employees are engaged in handling both kinds of traffic. In fact, the cost of train operations is higher on intrastate than on interstate traffic by reason of the fact that the preponderance of the intrastate traffic is in local trains, whereas the interstate traffic moves predominantly in through trains." (Here follow typical examples of train movements.)

The foregoing findings are amply supported by evidence. The comparisons shown, for the three Florida railroads, of Florida operations, system operations and operations of all carriers in the southern region, were taken from exhibits

filed by a witness for the Florida Commission (Nos. 60 and 63, R. 763, 768A). Exhibit No. 1 (Sch. 29, R. 595), filed by the railroads, deals specifically with operations of the A.C.L. and S.A.L. in Florida, as contrasted with other portions of the systems lying outside of Florida, and shows among other things that the density or volume of traffic, which has a direct bearing upon the cost of conducting transportation, is far less in Florida than on other portions of the systems. For example, in 1947 the number of tons of revenue freight per mile of road operated on the A.C.L.'s lines in Florida was *only 64.68 per cent* of the corresponding figure for the system as a whole outside of Florida, and in 1948 was *only 62.93 per cent;* while for the Seaboard Air Line the corresponding figures were 68.64 per cent and 69.71 per cent, respectively. Exhibit No. 4 (R. 608) shows that in 1948 "freight transportation expenses per 1,000 revenue ton miles" on the Seaboard's lines in Florida were 139.85 per cent of the corresponding figure for the system outside of Florida; that in "train service expenses per train mile" this excess was 116.31 per cent; in "crew wages per loaded car mile" 142 per cent; and in "transportation expenses per loaded car mile" the excess was 153.92 per cent. The same exhibit shows that the percentage of empty to loaded car miles on the lines in Florida was 136.57 per cent of the corresponding percentage for the balance of the system.

Operating officers of the A.C.L. and S.A.L. testified that train operations in the handling of intrastate traffic in Florida are more expensive than such operations in the handling of interstate traffic moving to or from Florida for the reason, among others, that the preponderance of the intrastate traffic is handled in *local* trains, which are more expensive to operate than the *through* trains in which the preponderance of the interstate traffic is handled. (R. 157, 176).

As to "Persons-localities" preference or prejudice.

The Commission made no general finding of preference or prejudice between persons or localities in intrastate commerce, on the one hand, and persons or localities in interstate commerce, on the other hand. Its general finding upon this subject (Finding No. 7), related to *localities* in Florida, on the one hand, and *localities* in other states, on the other hand; while its finding with respect to persons, i.e., shippers, was limited to shippers of a single commodity, namely, cement. Reference was made in the report (278 I.C.C., pp. 48-57, R. 89-106) to numerous shipments of large numbers of different commodities which move to destinations, located throughout the entire state, from localities in other states and from competing localities within Florida, respectively, at rates lower for the intrastate than for the interstate movements (Ex. No. 12, Sections B and C, R. 616, 620).

The court below expressed the view (R. 137) that it was "doubtful" whether the order could be sustained under that branch of Section 13(4) which relates to preference or prejudice between persons or localities, but that the order was clearly sustainable upon the ground of undue and unlawful discrimination against interstate commerce. No question relating to such "persons-localities" preference or prejudice appears to have been raised by appellants on this appeal (Appellants' Statement as to Jurisdiction, pp. 2, 3).

CONCLUSION

The record here shows that the Commission made all essential basic findings to support the ultimate conclusions upon which the order herein attacked was entered. Those findings are supported in the record by substantial evidence. All appropriate procedural steps were taken, including

notice, hearing, receipt of material evidence, briefs and oral argument on behalf of the interested parties, all in keeping with the applicable statutes and the Rules of Practice of the Commission. The Commission also proceeded in all other respects in conformity with its statutory duty and authority. We submit that the District Court committed no error in refusing the injunction and dismissing the complaint attacking the order of the Commission and that its judgment should, therefore, be affirmed.

Respectfully submitted,

JAMES A. BISTLINE,
FRANK W. GATHMEY,
Attorneys for Railroad Appellees.

OCTOBER 3, 1952.

APPENDIX

U. S. Code, Title 49, Section 13(2)(3)(4).

"(2) Said Commission shall, in like manner and with the same authority and powers, investigate any complaint forwarded by the railroad commissioner or railroad commission of any State or Territory at the request of such commissioner or commission, and the Interstate Commerce Commission shall have full authority and power at any time to institute an inquiry, on its own motion, in any case and as to any matter or thing concerning which a complaint is authorized to be made, to or before said Commission by any provision of this part, or concerning which any question may arise under any of the provisions of this part, or relating to the enforcement of any of the provisions of this part. And the said Commission shall have the same powers and authority to proceed with any inquiry instituted on its own motion as though it had been appealed to by complaint or petition under any of the provisions of this part, including the power to make and enforce any order or orders in the case, or relating to the matter or thing concerning which the inquiry is had excepting orders for the payment of money. No complaint shall at any time be dismissed because of the absence of direct damage to the complainant. Representatives of State commission sitting with the Commission, under the provisions of this section, in cases pending before the Commission, shall receive such allowances for travel and subsistence expense as the Commission shall provide.

"(3) Whenever in any investigation under the provisions of this part, or in any investigation instituted upon petition of the carrier concerned, which petition is hereby authorized to be filed, there shall be brought in issue any rate, fare, charge, classification, regulation, or practice, made or imposed by authority of any State, or initiated by the President during the period of Federal control, the Commission, before proceeding to

hear and dispose of such issue, shall cause the State or States interested to be notified of the proceeding. The Commission may confer with the authorities of any State having regulatory jurisdiction over the class of persons and corporations subject to this part or part III with respect to the relationship between rate structures and practices of carriers subject to the jurisdiction of such State bodies and of the Commission; and to that end is authorized and empowered, under rules to be prescribed by it, and which may be modified from time to time, to hold joint hearings with any such State regulating bodies on any matters wherein the Commission is empowered to act and where the rate-making authority of a State is or may be affected by the action taken by the Commission. The Commission is also authorized to avail itself of the cooperation, services, records, and facilities of such State authorities in the enforcement of any provision of this part of part III.

"(4) Whenever in any such investigation the Commission, after full hearing, finds that any such rate, fare, charge, classification, regulation, or practice causes any undue or unreasonable advantage, preference, or prejudice as between persons or localities in Intrastate commerce on the one hand and interstate or foreign commerce on the other hand, or any undue, unreasonable, or unjust discrimination against interstate or foreign commerce, which is hereby forbidden and declared to be unlawful, it shall prescribe the rate, fare, or charge, or the maximum or minimum, or maximum and minimum, thereafter to be charged, and the classification, regulation, or practice thereafter to be observed, in such manner as, in its judgment, will remove such advantage, preference, prejudice, or discrimination. Such rates, fares, charges, classifications, regulations, and practices shall be observed while in effect by the carriers parties to such proceeding affected thereby, the law of any State or the decision or order of any State authority to the contrary notwithstanding."

U. S. Code, Title 49, Section 15a(2).

"(2) In the exercise of its power to prescribe just and reasonable rates the Commission shall give due consideration, among other factors, to the effect of rates on the movement of traffic by the carrier or carriers for which the rates are prescribed; to the need, in the public interest, of adequate and efficient railway transportation service at the lowest cost consistent with the furnishing of such service; and to the need of revenues sufficient to enable the carriers, under honest, economical, and efficient management to provide such service."

National Transportation Policy

54 Stat. 899, 49 U. S. C. 4281.

"It is hereby declared to be the national transportation policy of the Congress to provide for fair and impartial regulation of all modes of transportation subject to the provisions of this Act, so administered as to recognize and preserve the inherent advantages of each; to promote safe, adequate, economical, and efficient service and foster sound economic conditions in transportation and among the several carriers; to encourage the establishment and maintenance of reasonable charges for transportation services, without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices; to cooperate with the several States and the duly authorized officials thereof; and to encourage fair wages and equitable working conditions; — all to the end of developing, coordinating, and preserving a national transportation system by water, highway, and rail, as well as other means, adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense. All of the provisions of this Act shall be administered and enforced with a view to carrying out the above declaration of policy."

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No. 9

In the Supreme Court of the United States

OCTOBER TERM, 1952

WILBUR C. KING, JERRY W. CARTER AND RICHARD A. MACK, AS AND CONSTITUTING THE FLORIDA RAILROAD AND PUBLIC UTILITIES COMMISSION, APPELLANTS

v.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF FLORIDA

BRIEF FOR THE UNITED STATES AND THE INTERSTATE COMMERCE COMMISSION

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No. 9

WILBUR C. KING, JERRY W. CARTER AND RICHARD A. MACK, AS AND CONSTITUTING THE FLORIDA RAILROAD AND PUBLIC UTILITIES COMMISSION, APPELLANTS

v.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF FLORIDA

BRIEF FOR THE UNITED STATES AND THE INTERSTATE COMMERCE COMMISSION

OPINIONS BELOW

The opinion of the district court (R. 132) is reported in 101 F. Supp. 941. The report of the Interstate Commerce Commission (R. 80) is reported in 278 I. C. C. 41.

JURISDICTION

The final judgment of the district court was entered on July 17, 1951 (R. 140). The petition

for appeal was presented and allowed on September 7, 1951 (R. 140, 142). The jurisdiction of this Court is conferred by 28 U. S. C. 1253, 2101 (b), and 2325. Probable jurisdiction was noted January 2, 1952 (R. 824).

QUESTIONS PRESENTED

In two "general revenue" proceedings under Section 15a of the Interstate Commerce Act the Interstate Commerce Commission authorized certain general increases in interstate freight rates in order that the railroads of the country might receive sufficient revenue to enable them to furnish adequate and efficient transportation service. After the State of Florida had refused to permit certain corresponding increases in intrastate freight rates, the Interstate Commerce Commission determined that the lower intrastate rates caused unjust discrimination against interstate commerce and undue prejudice to interstate localities. An order of the Commission raising intrastate rates to the extent found necessary to remove this unjust discrimination and undue prejudice was affirmed by the court below. On appeal from the judgment of affirmance, the questions presented are:

(1) Whether the Commission's order prescribing Florida intrastate rates lacks the support of necessary subsidiary findings because the Commission did not find:

(a) in terms of specific dollar amounts, what revenues from intrastate traffic constitute a fair contribution to the Florida railroads' total revenue needs;

(b) in terms of specific dollar amounts, the total revenue required to enable these railroads to operate efficiently;

(c) that the prior intrastate rates were less than compensatory.[1]

(2) Whether the power given the Interstate Commerce Commission to prescribe intrastate rates under which intrastate traffic will contribute a fair proportion of the revenue needed to enable the affected railroads to furnish adequate and efficient transportation service authorizes the Commission to raise intrastate freight rates if the railroads' revenue needs largely result from deficits in their passenger operations.

STATUTE INVOLVED

The pertinent provisions of the Interstate Commerce Act are set forth in the Appendix, *infra*, pp. 56–58.

STATEMENT

This case involves the validity of an order issued by the Interstate Commerce Commission

[1] Appellants also contend that the Commission failed to find that maintenance of the intrastate freight rates at the interstate level will be reasonable and is necessary to the operation of an efficient and adequate national transportation system. As we point out, pp. 30–32, *infra*, the Commission so found.

in a proceeding under Section 13 (3) and (4) of the Interstate Commerce Act. The order required the railroads operating in Florida to establish, with certain exceptions, Florida intrastate freight rates reflecting the increases maintained on corresponding interstate traffic to, from and between Florida points under the Commission's authorizations in the proceedings known as *Ex Parte No. 162* and *Ex Parte No. 166*.[2] Appellants attack the Commission's order on the grounds that the Commission failed to make certain findings which appellants assert were necessary to a valid order, and that the Commission exceeded its statutory authority. They do not now make any contention that the findings made by the Commission lack evidentiary support.

THE PROCEEDINS IN *EX PARTE 162* AND *EX PARTE 166*

Ex Parte 162 was an application to the Commission authorized by its report of December 5, in April 1946, for a 25% increase in interstate freight rates (264 I. C. C. 695, 698). The Commission, authorized by its report of December 5, 1946, a 20% increase in basic interstate freight rates, with specified different increases for particular commodities (266 I. C. C. 537, 542, 614). In *Ex Parte 166,* initiated in July 1947, the Commission's final report of July 27, 1948, authorized

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[2] *Increased Railway Rates, Rates, Fares, and Charges, 1946, Ex Parte No. 162*, 264 I. C. C. 695, 266 I. C. C. 537; *Increased Freight Rates, 1947, Ex Parte No. 166*, 269 I. C. C. 33, 270 I. C. C. 81, 270 I. C. C. 93, 270 I. C. C. 403.

a 25% increase in basic interstate freight rates in "southern territory," [3] a 30% increase in official territory, a 25% increase in part of western territory, and a 20% increase in the remainder of that territory, subject to maximum amounts on particular commodities and to flat increases on others (R. 84).

In each of the two proceedings the Commission found that the rate increases which it authorized would provide additional revenue required by the railroads to enable them to carry out essential rehabilitation of plant and equipment and to maintain transportation service adequate to the needs of commerce, the postal service, and national defense; and found that the railroads' critical need for greater revenue following termination of World War II resulted from sharply higher operating expenses (due to increased rates of pay and other wage benefits to railroad employees, additional payroll taxes, and higher prices for materials and supplies, particularly fuel), and a precipitate decline in revenue from passenger traffic.[4]

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[3] Southern territory is roughly the area south of the Ohio and Potomac Rivers and east of the Mississippi River (270 I. C. C. 403, 456).

[4] See 264 I. C. C. 695, 702, 704–706, 737–738; 266 I. C. C. 537, 544–546, 613–614; 269 I. C. C. 33, 42–44, 53–54; 270 I. C. C. 81, 87–90; 270 I. C. C. 93, 95–98; 270 I. C. C. 403, 406, 428–431, 440.

In each proceeding the Commission acted after receipt of testimony and evidence of the most comprehensive character and after a week of oral argument before the entire Commission.[5] The Commission acted in full recognition of the gravity of the issues presented for determination, and it was acutely aware that any substantial increase in freight rates would affect the Nation's entire economy. In *Ex Parte 162* it said (266 I. C. C. 537, 613):

> What we do will directly affect production and distribution in the industries of the Nation, and the welfare of its various regions, as well as the transportation industry. It will have its effect upon the forces tending to economic stabilization or the reverse. * * * No case has ever received from us more earnest study.

In Ex Parte 166 it observed that responsible authorities had strongly urged that an increase in freight rates "might stimulate already existing inflationary forces," but the Commission concluded that this factor was outweighed by the necessity of enabling the railroads, confronted with a sharp ascent in operating costs, to "main-

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[5] 266 I. C. C. 537, 543; 270 I. C. C. 403, 410. In *Ex Parte 162*, 366 witnesses were examined and 216 verified statements were received; in *Ex Parte 166*, 473 witnesses testified, 286 verified statements were received, and on oral argument 102 counsel were heard and 112 written arguments were received (*ibid.*). The hearings for the taking of evidence were conducted by Division 2 (consisting of four Commissioners) or by a Commissioner and an examiner (*ibid.*).

tain their credit, procure additional equipment which is now urgently needed, and rehabilitate and improve their properties generally to take care of the demand of the public for adequate transportation service" (269 I. C. C. 33, 53). See also 270 I. C. C. 93, 97.

Since the two proceedings were grounded upon basic revenue needs, the Commission, as shown by its various reports, considered and acted upon the revenues, expenses and net income of the railroads' total operations, both intrastate and interstate. A foundation of the Commission's decision in *Ex Parte 166* as to what rate increase would provide the additional revenue found to be needed was that intrastate rates would be correspondingly increased. The Commission, in estimating the operating revenues reasonably to be expected under the rates "now in effect or found justified by our orders," based its estimate "upon the assumption that timely similar adjustments will be made upon intrastate traffic" (270 I. C. C. 403, 428). Likewise, the Commission's tabulation of the over-all percentage increases in freight rates (both for the United States and for the different territories) resulting from the prior rulings in *Ex Parte 162* and *166*, "assumes increases to have been approved on intrastate traffic similarly to those upon interstate traffic in the same territory, for the whole time" (270 I. C. C. 403, 421). See also 269 I. C. C. 33, 39; 270 I. C. C. 93, 94; 270 I. C. C. 403, 437, 448.

In view of the relation to intrastate rates of the conclusions which might be reached in the two *Ex Parte* proceedings, the Commission invited the cooperation of the state regulatory commissions and a committee appointed by the National Association of Railroad and Utilities Commissioners sat during the hearings and oral argument of each proceeding.[6] A majority of the committee "agreed in general" with the Commission's conclusions in *Ex Parte 162* and the committee concurred in the conclusions reached by the Commission in *Ex Parte 166* (266 I. C. C. 537, 613; 270 I. C. C. 403, 463).

THE RULINGS OF THE FLORIDA COMMISSION

The railroads operating in Florida applied to the Florida Railroad and Public Utilities Commission (Florida Commission) for an increase in Florida intrastate freight rates corresponding to the interstate increase authorized in *Ex Parte 162* (R. 610). Like application was made based on the increases (interim and final) authorized in *Ex Parte 166* (R. 611–613). The railroads presented in support of these applications the record in *Ex Parte 162* and *166* and comprehensive additional evidence (R. 610, 614).

The Florida Commission in its ruling on the application based on *Ex Parte 162* referred to figures and estimates showing that Nation-wide

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[6] 264 I. C. C. 695, 699; 266 I. C. C. 537, 543–544; 269 I. C. C. 33, 38–39; 270 I. C. C. 81, 86–87.

railroad operating costs had increased by more than $2,150,000,000 per annum compared with 1939, and said that although the figures and estimates covered both interstate and intrastate operations, "they bear a direct relation to corresponding Florida intrastate revenues and expenses" (R. 43). The Florida Commission also recognized that there had been many substantial reductions in both interstate rates and Florida intrastate rates since March 28, 1938, and said: "Many of these reductions were so drastic that if the requested increases are granted the resulting rates will even then approximate only 57.7 per cent of the corresponding rate ten years ago" (R. 45).

The Florida Commission granted a 20% increase in Florida intrastate freight rates (the same percentage increase authorized in *Ex Parte 162*), but denied any increase on transportation to mills or processing plants of sugar cane, waste woods, logs, and wet phosphate rock (R. 41, 48–51, 53).[7] The view of the state body was that these incoming shipments involved transportation of raw materials to plants or mills whose shipments of finished products bear the *Ex Parte 162* increase, and that there would be a "double increase" to the industry if freight rates on incoming shipments were increased (R. 49, 50–51).

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[7] The increase on pulpwood was limited to 9%, upon the ground that in 1938 the rates on this commodity were raised 10% in Florida but not in Alabama or Georgia (R. 49–50).

The Florida Commission's ruling on the railroads' supplemental application based on the rate increase finally authorized in *Ex Parte 166* granted a 20% increase in general intrastate freight rates, as compared with the 25% increase in interstate rates in southern territory authorized in *Ex Parte 166* (R. 67–68, 75).[8] The Florida Commission assumed to determine what were the grounds for the Interstate Commerce Commission's grant of such 25% increase, and to determine that these grounds were not applicable to Florida intrastate traffic. The Florida Commission said that "the reasons which appear to have been persuasive in influencing the Interstate Commerce Commission" in increasing interstate rates 25% in southern territory "are of but minor importance with respect to Florida intrastate traffic" (R. 70). It said that the Interstate Commerce Commission had authorized only a 20% rate increase in interstate rates in most of western

[8] The increase permitted on road aggregates (sand, gravel, etc.) was 10% and on class rates and rates based thereon was 10¼%, and no increase was granted on sugar cane moving to mills, waste woods moving to Pensacola, Florida, and fertilizer and fertilizer materials (R. 67, 71, 84–85).

As to general increases, the following sets forth the action of the Interstate Commerce Commission in *Ex Parte 166* and the corresponding action of the Florida Commission (R. 611–613):

Interstate Commerce Commission		Florida Commission	
Date of Order	Increase	Date of Order	Increase
10/ /47	10% interim	11/10/47	None
12/29/47	20% interim	4/ /48	20% interim
4/13/48	25% interim	Action deferred	
7/27/48	25%	11/13/48	20%

territory "because of more favorable operating conditions," and that there was "equal justification" for granting only a 20% increase in Florida intrastate rates (R. 71).

THE INTERSTATE COMMERCE COMMISSION'S ACTION ON FLORIDA INTRASTATE RATES

On the petition of railroads operating in Florida, the Interstate Commerce Commission instituted in January 1949 a Section 13 investigation of Florida intrastate rates (R. 78–80). At hearings before one of the Commissioners and an examiner (R. 149), numerous witnesses were examined (R. 156–572), various verified statements were received in evidence (R. 610–690, 692–756, 776–820), and over 170 exhibits were introduced.[9] The Commission, after hearing argument on exceptions to the examiner's proposed report (R. 81), rendered its report on May 4, 1950 (R. 80). It concluded that, with certain exceptions and limitations,[10] Florida intrastate rates should be established reflecting the same increases maintained on like interstate traffic under the Com-

[9] By stipulation of the parties, most of the exhibits have not been printed (R. 821–822).

[10] The exceptions and limitations are substantial. The prescribed increase did not apply to rates on road aggregates, petroleum and its products, and certain other commodities; intrastate single-line rates on fertilizer and fertilizer products were not to be increased above those being maintained by the Florida East Coast Railway (R. 85, 105–106, 119–120).

mission's authorizations in *Ex Parte 162* and *Ex Parte 166*, but that no intrastate rate was to be increased above the corresponding interstate rate on traffic to and from Florida points (R. 119–120). The changes so established were estimated to increase rail revenue by about $915,000 annually (R. 86).

The Commission's report, issued more than 15 months after the proceeding was instituted, occupies 40 pages of the printed record (R. 81–121). The Commission reviewed in detail intrastate and interstate class rates and intrastate and interstate commodity rates on commodities which move in "substantial volume" in Florida,[11] and found that intrastate rates were uniformly below the level of the corresponding interstate rates (R. 86–102, 113–118). The Commission also considered and made findings with respect to various other aspects of its Section 13 investigation (R. 104–113). Its ultimate findings (R. 118–120), which include a finding that present Florida intrastate rates cause and will continue to cause unjust discrimination against interstate

[11] The commodities considered were agricultural limestone, fertilizer and fertilizer materials, logs, lumber, phosphate rock, pulpwood, resinous wastewood, and sugar cane.

The Commission found that these commodities were "fairly representative of the relative situation, intrastate compared with interstate," of other commodities, (R. 102–103). There was clear evidentiary support for this finding since exhibits showed in detail the intrastate and interstate rates on "practically every commodity of any importance moving in Florida" (R. 103).

commerce (R. 119), are set forth under point I of the Argument (*infra*, pp. 29–30). We presently merely call attention to certain significant subsidiary findings.

The unit cost of handling Florida intrastate traffic is at least as great as the cost of handling interstate traffic within Florida (R. 108). The cost of train operations is higher in Florida on intrastate than on interstate traffic because intrastate traffic moves preponderantly in local trains and interstate traffic predominantly in through trains (R. 107) and the unit cost of handling a given quantity of freight a certain distance is greater in local trains than in through trains (R. 108).

Operating conditions in Florida are less favorable than in adjacent States (R. 107). Comparison of the 1947 Florida freight operations of the three railroads having the greatest Florida mileage [12] with the 1947 operations of all carriers in southern territory shows the following (*ibid.*):

	Florida Operations	*Southern Territory Operations*
Revenue tons per train-mile	703.9	843.1
Revenue tons per car-mile	18.4	19.4
Revenue tons per locomotive mile-road	688.7	787.7
Freight operating ratio [13a]	73.4	72.3

[13a] The freight operating ratio is the ratio of operating costs to revenue. Operating results are, of course, less favorable when this ratio is higher.

[12] Atlantic Coast Line Railroad (Coast Line), Seaboard Air Line Railroad (Seaboard) and Florida East Coast Railway (East Coast). The Florida Commission found that these carriers handle about 90% of total Florida rail traffic (R. 70).

In 1948 the three Florida railroads earned an average return of 2.91% on their property investment (including materials, supplies and cash) less depreciation (R. 109).[13] In 1946 the return on such investment was 1.62% for the Coast Line, 4.91% for the Seaboard, and 4.35% for the East Coast (*ibid.*). In 1947 these railroads, without the general increases authorized by the Commission (and extended to most of intrastate traffic), would have had a deficit of $16,871,215 (*ibid.*).

The Commission gave the Florida Commission opportunity to permit the increases found to be necessary (R. 121), but when such permission proved to be not forthcoming, the Commission entered an order on July 25, 1950, carrying into effect the findings of its report of May 4, 1950 (R. 129). Under the terms of the order the Florida railroads, respondents in the Commission proceeding (R. 80), were required to establish not later than September 28, 1950, Florida intrastate rates conforming to the findings of the Commission's report (R. 130).

THE DISTRICT COURT'S DECISION

The members of the Florida Commission, the present appellants, filed suit on September 15, 1950, asking that the order of July 25, 1950, be

[13] The return on investment earned by East Coast, which operates entirely in Florida, was 2.45% (R. 111).

permanently enjoined (R. 1, 17).[14] The Commission and all Class I railroads operating in Florida intervened as parties defendant (R. 133). Certain shippers and traffic organizations intervened in support of the complaint (*ibid.*) but have not appealed from the district court's judgment of dismissal.

The district court held that the determination by the Interstate Commerce Commission that interstate freight rates should be increased to provide additional revenue required for maintenance of an adequate and efficient transportation system, and its determination that Florida intrastate freight rates should be increased so that Florida intrastate traffic would contribute its fair share of the required additional revenue, were not rendered invalid by reason of the fact that the railroads' revenue needs resulted in major part from deficits incurred in their passenger operations (R. 136–137). The court further held that it was clear from the evidence that Florida intrastate freight rates, if not increased, would cause unjust discrimination against interstate commerce (R. 138), and that the Commission's findings bearing upon such discrimination met the requirements laid down in *North Carolina* v.

[14] The parties filed with the court a stipulation providing that the rates prescribed by the order should go into effect on September 28, 1950, and that the railroads would refund to shippers the increased rates collected in the event that the courts should finally hold the Commission's order unlawful.

United States, 325 U. S. 507 (R. 137). The court noted that a saving clause in the Commission's order permits any interested party to secure modification of any specific intrastate rate if modification is shown to be justified by the facts,[15] and that pursuant to this clause certain of the rates incorporated in the Commission's order "have already been modified or removed from the order" (R. 139).

SUMMARY OF ARGUMENT

I

A. The Interstate Commerce Commission issued its order raising Florida intrastate freight rates to remove an unjust discrimination against interstate commerce caused by state-prescribed intrastate rates. The findings requisite to the validity of this order must be determined with reference to the provisions of the Interstate Commerce Act on which the order was based and their purposes. Section 15a makes it the duty of the Commission to exercise its rate-making power in such manner that the nation's railroads will receive sufficient revenue to enable them to render efficient transportation service, adequate to meet the needs of the commerce of the United States, the postal service, and national defense. Section 13 (4)

[15] The Commission's report of May 4, 1950, contains this saving clause (R. 120–121). The order effectuating the findings of the report requires maintenance of rates no lower than those therein approved, "as provided in said report" (R. 130).

implements the directive of Section 15a by clothing the Commission with power to deal with intrastate rates which do not contribute a fair proportion of the railroads' revenue needs and thus unjustly discriminate against interstate commerce. The section is in "dovetail relation" to the purposes of Section 15a. It grants a limited power to prescribe intrastate rates in recognition of the essential unity of interstate and intrastate rail transportation, which in actual operation are inextricably blended.

B. Appellants' attack upon the sufficiency of the findings rests upon the absence of findings (a) as to the dollar amount of revenue from Florida intrastate traffic which would constitute a fair proportion of the affected railroads' total revenue needs, (b) as to dollar amount of total revenue required to enable these railroads to operate efficiently, and (c) that the state-prescribed rates were less than compensatory.

C. In eight unanimous decisions this Court has upheld orders of the Interstate Commerce Commission of the character of the present order notwithstanding absence of the foregoing allegedly essential findings. In addition, a requirement of findings, in specific dollar figures, of total railroad revenue needs and of the contribution from intrastate traffic constituting a fair proportion thereof would cripple the Commission's power to remove unjust discrimination against inter-

state commerce from a revenue standpoint. This Court has consistently rejected interpretations of Sections 13 (4) and 15a which would paralyze effective administrative action by imposing upon the Commission well-nigh impossible tasks, not truly related to the broad purposes of these provisions of the Act. Likewise, the power to raise intrastate rates, given by Section 13. (4), is not limited to rates which are less than compensatory. Such a limitation would cast upon interstate commerce the entire burden of any general upward rate adjustment required by the mandate of Section 15a. It would render the Commission impotent to bring about a fair apportionment of this burden by raising intrastate rates within the zone of reasonableness. Such a construction would defeat the purpose of Section 13 (4).

D. Appellants' attack upon the sufficiency of the findings is grounded almost exclusively upon *North Carolina* v. *United States*, 325 U. S. 507. The order raising intrastate passenger fares in North Carolina was there held to lack the support of requisite findings in that (1) the Commission had not found that the corresponding interstate rate, prescribed by the Commission as the intrastate rate, was "reasonable and lawful" and (2) had made no findings with respect to evidence indicating that the prescribed minimum intrastate rate was, as to the railroads involved, above a

reasonable level. Here there are no missing findings of this kind. The Court in the *North Carolina* case did not expressly hold, and we find no indication that it intended to intimate, that findings of the kind which the present appellants assert to be essential are necessary to the validity of any order of the type before the Court in the *North Carolina* case. Rather it would appear that the Court was of the opinion that, at least in the absence of such findings, the other deficiencies in the findings which were there found to exist were fatal to the validity of the Commission's order.

II

Appellants urge that the increase made in Florida intrastate freight rates was beyond the Commission's authority since deficits incurred in railroad passenger operations were a factor in such increase. The revenue required for furnishing adequate and efficient railway transportation service is necessarily measured by the cost of providing both freight and passenger service. Railroad passenger operations have, as a whole, been conducted at a loss in every year since 1929, except for the years 1942–1945. This situation could be remedied little, if at all, by raising passenger fares because higher fares were likely to accelerate the deep inroads upon rail passenger

traffic resulting from increasing travel by private car, motor bus, and air. The Commission could thus validly conclude that, when fixing rates which would provide revenue sufficient for the railroads' needs, rates for non-passenger transportation services might be fixed in the light of over-all revenue needs, including the need arising from deficits in passenger operations. In fact, the Commission has for a long period of time taken account of such deficits when fixing freight rates in Section 15a revenue proceedings.

This Court has never even intimated that this long continued policy of the Commission is not a proper exercise of the discretion vested in it, both in proceedings under Section 15a, and in proceedings under Section 13 (4) to determine the fair proportion of the carriers' total revenue requirements to be contributed by intrastate traffic. On the contrary, the Court has upheld an order under Section 13 (4) prescribing an increase in intrastate freight rates, corresponding with an increase in interstate freight rates, designed primarily to offset passenger deficits. *United States* v. *Louisiana,* 290 U. S. 70.

Constitutional limitations have been held to forbid a state to fix a nonremunerative rate for particular traffic notwithstanding the possibility that charges for other transportation might offset losses resulting from the nonremunerative rate. This holding suggests no barrier to the power of the Commission to raise freight rates in order

to provide needed revenues which it concluded could not be obtained by other means. The rates so fixed were within the zone of reasonableness and it was for the Commission to determine, under the statute, the rate changes to be made in the light of the railroads' over-all revenue needs. And the Commission, in the proceeding involving Florida intrastate freight rates, plainly was entitled to conclude that, in order to avoid discrimination against interstate freight shippers, a fair proportion of the burden of the interstate freight increase should be borne by intrastate freight shippers.

ARGUMENT

I

THE INTERSTATE COMMERCE COMMISSION MADE ALL FINDINGS ESSENTIAL TO THE VALIDITY OF ITS ORDER PRESCRIBING INCREASES IN FLORIDA INTRASTATE FREIGHT RATES

The findings requisite to support a valid order issued in the exercise of powers conferred by the Interstate Commerce Act obviously vary with the statutory provisions on which the order is based and with the nature of the problem to which the order relates.[16] Where the adequacy of the Com-

[16] While the Commission must make the "basic" or "quasi-jurisdictional" findings essential to the statutory validity of an order, "the basic findings essential to the validity of a given order will vary with the statutory authority invoked and the context of the situation presented." *Alabama Great Southern R. R.* v. *United States*, 340 U. S. 216, 228.

mission's findings is brought into question, it is important to consider the meaning and purpose of the applicable statutory provisions, as interpreted and applied where the Commission has exercised authority under like circumstances. We therefore initially discuss the sections of the Interstate Commerce Act which underlie the order attacked in this proceeding and decisions of this Court construing these sections.

A. THE APPLICABLE STATUTORY PROVISIONS AND THEIR PURPOSES

The Commission issued its order under Section 13 (4) of the Act, which provides (*infra,* pp. 57–58) that whenever the Commission finds, after full hearing, that any intrastate rate causes "undue, unreasonable, or unjust discrimination" against interstate commerce, it shall prescribe such maximum or minimum rate as will, in its judgment, remove this discrimination. The Commission found that Florida intrastate freight rates were causing such discrimination because they had not been increased by the same percentage as the increase made in Florida interstate rates pursuant to determinations made by the Commission in proceedings under Section 15a of the Act. This section (*infra,* p. 58) makes it the duty of the Commission, when exercising the rate-making powers conferred upon it with respect to interstate commerce, to give due consideration "to the need of revenues sufficient to enable the carriers" to provide "adequate and efficient railway trans-

portation service." The Commission's Section 15a proceedings were also in effectuation of the national transportation policy declared by Congress—that all provisions of the Act be administered to the end of developing and preserving a national transportation system "adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense" (*infra*, p. 56).

Both Section 13 (4), which authorizes the Commission to deal directly with intrastate rates when they cause undue discrimination against interstate commerce, and Section 15a, which imposes upon the Commission the affirmative duty to fix rates which will enable the railroads to maintain adequate railway service for the people of the United States, were among the new statutory provisions introduced into the Act by the Transportation Act, 1920. They constituted a novel and important departure from prior policy, Congress having been previously concerned mainly with "the prevention of abuses." *New England Division Case*, 261 U. S. 184, 189; *Wisconsin Railroad Commission* v. *C. B. & Q. R. R. Co.*, 257 U. S. 563, 584–585.[17] Their enactment

[17] The provision of Section 13 (4) authorizing the Commission to remove preferences or prejudices between persons or localities was, in effect, an enactment in statutory form of the doctrine of the "Shreveport" case, *Houston, E. & W. Texas Ry. Co.* v. *United States*, 234 U. S. 342. But the further provision authorizing removal generally of discrimination against interstate commerce was new, and paralleled

was prompted by the fact that there had been a rapid rise in the prices of materials and labor during 1918 and 1919, so that the railroads, upon termination of wartime federal control and operation on March 1, 1920, "were likely to face a demoralizing lack of credit and income." 257 U. S. at 583–584.

In the *Wisconsin Railroad Commission* case this Court first passed upon the new statutory provisions. It upheld an order of the Interstate Commerce Commission fixing minimum intrastate passenger fares in Wisconsin at 3.6 cents per mile, the increased fare which the Commission had earlier approved for interstate passengers in a Section 15a revenue proceeding.[18] The ground of decision was that intrastate fares below those applying in interstate commerce (under authorization of the Commission in a Section 15a proceeding) could properly be found by the Commission to cause a discrimination against interstate commerce which Section 13 (4) empowered the Commission to remove. The Court said (257 U. S. at 585–586):

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the "general revenue" provisions of Section 15a, as the Court pointed out in the *Wisconsin Railroad Commission* case, at pp. 584 and 586.

[18] In a second case, decided the same day and presenting the same issues, the Court upheld an order under Section 13 (4) fixing 3.6 cents per mile as the minimum fare for intrastate passengers in New York. *New York v. United States*, 257 U. S. 591.

> Intrastate rates and the income from them must play a most important part in maintaining an adequate national railway system. * * * The effective operation of the act will reasonably and justly require that intrastate traffic should pay a fair proportionate share of the cost of maintaining an adequate railway system.

The Court observed that if intrastate commerce does not make its equitable contribution to the revenue requirements of the railroads, interstate commerce may have to bear the burden of making up the deficiency through high interstate rates. 257 U. S. at 586. The Court pointedly declared (*ibid.*)—

> it is impossible to escape the *dovetail relation* between that provision [§ 13 (4)] and the purpose of § 15a. *If that purpose is interfered with by a disparity of intrastate rates, the Commission is authorized to end the disparity* by directly removing it, because it is plainly an "undue, unreasonable, or unjust discrimination against interstate or foreign commerce", within the ordinary meaning of those words. [Italics supplied.]

The Court held that effectuation of the statutory command that interstate rates should be so adjusted as to enable the railroads to maintain a transportation system adequate to the country's needs requires "incidental regulation of intrastate commerce," and exercise of the authority given by Section 13 (4) therefore does not conflict with

statutory or constitutional limitations on the Commission's powers. 257 U. S. at 588. This was because, from the standpoint of the railroads' over-all revenue needs, the railroad transportation system is essentially a unit in view of the "blending" of interstate and intrastate traffic "in actual operation." "The same rails and the same cars carry both. The same men conduct them. Commerce is a unit and does not regard state lines * * *." *Ibid.*

The Court, in sustaining the action of the Commission directed against rate disparity resulting in real discrimination against interstate commerce, said that the Commission "must leave appropriate discretion to the state authorities to deal with intrastate rates as between themselves on the general level" prescribed by the Commission, 257 U. S. at 590–591. The Court concluded that the saving clause of the order which had been entered permitted such adjustments, by providing that there may be application to the Commission for "appropriate exception" from the rates fixed by the order.[19] 257 U. S. at 591.

This Court has adhered, without deviation, to the interpretation placed upon Sections 13 (4) and 15a in its unanimous decision in the *Wisconsin Railroad Commission* case. We cite below in

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[19] The saving clause to which the Court referred is substantially identical with the saving clause incorporated in the order entered in the present case. See *Wisconsin Passenger Fares*, 59 I. C. C. 391, 396, and R. 120–121.

the footnote the cases passing upon orders issued under Section 13 (4) and presenting the issue of unjust discrimination against interstate commerce caused by intrastate rates below the level of corresponding interstate rates.[20] All except *Florida* v. *United States*, 282 U. S. 194, and *North Carolina* v. *United States*, 325 U. S. 507, which will be discussed later (*infra*, pp. 38–39, 41–44), upheld the orders issued under Section 13 (4); in all except the *North Carolina* case the Court's decision was unanimous.[21]

The Court has further held that this effect of the statute was not altered by the modification of Section 15a made in 1933. Section 15a as originally enacted (41 Stat. 488) not only provided that the Commission, when exercising its rate-making powers, should give due consideration to the country's transportation needs and to the necessity of enlarging transportation facilities in

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[20] *Florida* v. *United States*, 282 U. S. 194; *Georgia Pub. Serv. Comm.* v. *United States*, 283 U. S. 765; *Alabama* v. *United States*, 283 U. S. 776; *Louisiana Pub. Serv. Comm.* v. *T. & N. O. R. R.*, 284 U. S. 125; *United States* v. *Louisiana*, 290 U. S. 70; *Florida* v. *United States*, 292 U. S. 1; *Illinois Commerce Comm.* v. *United States*, 292 U. S. 474; *North Carolina* v. *United States*, 325 U. S. 507; *Alabama* v. *United States*, 325 U. S. 535. See also, *New York* v. *United States*, 342 U. S. 882; *Illinois* v. *United States*, 342 U. S. 930.

[21] We treat *Alabama* v. *United States*, 325 U. S. 535, as comprehended by the *North Carolina* case since the same issues were presented in both cases and the *Alabama* opinion simply refers to the views and conclusions stated in the *North Carolina* case.

order to provide the people of the United States with adequate transportation, but also provided for establishing rates under which the railroads as a whole (or in groups designated by the Commission) would, as nearly as may be, earn from their railway operations a fair return on the value of their property devoted to transportation service; and the net return of any particular railroad was limited, with earnings above this limitation going into a common pool for distribution to weak railroads.[22] The Emergency Railroad Transportation Act, 1933, amended the section so that it read substantially as it now stands.[23]

In *Florida* v. *United States,* 292 U. S. 1, this Court held that the change made in Section 15a did not in any respect modify the authority given the Commission by Section 13 (4) to remove an unjust discrimination against interstate commerce "caused by a disparity of intrastate rates viewed from a revenue standpoint"; that the changes made by Congress do not suggest "an intention to impair the Commission's authority over intrastate rates for the appropriate protection of interstate commerce"; that, on the contrary, the substituted rule of rate making "emphasizes the carriers' need of adequate revenues" and left

[22] As to the text of the section, in part, see 257 U. S., note at pp. 582–583. For a summary statement of the so-called recapture provisions, see 325 U. S., note at p. 515.

[23] As to the text of the section as then amended, see 292 U. S., note at pp. 6–7.

"intact" the power given the Commission by Section 13 (4) "to meet that need where inadequate intrastate rates caused unjust discrimination against interstate commerce." 292 U. S. at 6–8.

B. THE COMMISSION'S FINDINGS AND THE OMISSIONS ASSERTED BY APPELLANTS TO BE FATAL

We submit that, under the statutory provisions which we have outlined, the findings in the instant case meet all the requirements for a valid order. The ultimate findings, which are supported by many subsidiary findings,[24] include the following (R. 118–119):

(1) Transportation conditions incident to Florida intrastate transportation of freight are not more favorable than those within southern territory and between Florida and interstate points (fdg. 2).

(2) Florida intrastate rates below the level prescribed by the Commission are "abnormally low," do not contribute their "fair share" to the revenues required to enable Florida railroads to render "adequate and efficient service," and to achieve the statutory purpose of developing a national transportation system adequate to meet the needs of the commerce of the United States, the postal service, and national defense, and cast upon interstate commerce an undue burden (fdg. 5).

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[24] Some of the subsidiary findings have already been set forth (*supra*, pp. 13–14).

(3) The prescribed intrastate rate increase will "substantially increase" revenue of the railroads operating in Florida and will contribute "not more than a fair proportion" of their total income (fdg. 6).

(4) Present interstate freight rates within Florida and between Florida points and out-of-state points are "just and reasonable," and the intrastate rates fixed by the Commission will not exceed "a just and reasonable level" (fdg. 3).

(5) Maintenance of Florida intrastate rates lower than those fixed by the Commission "causes, and in the future will cause * * * unjust discrimination against interstate commerce" (fdg. 7).

Appellants contend (Br. 2, 26–32), notwithstanding these comprehensive findings, that the following further findings are essential and are missing: (a) "what contribution" from intrastate traffic constitutes a fair proportion of the railroads' total income; (b) "what amount of revenue" is required to enable them to operate efficiently; (c) that the state-prescribed intrastate rates are less than compensatory or insufficient to cover the full cost of service; and (d) that the intrastate freight rates prescribed by the Commission are "reasonable" and "necessary to the operation of" an adequate and efficient national transportation system.

In part, we believe, the assertedly missing findings have been made. Thus the findings which

the Commission has made clearly cover that part of the allegedly essential findings set forth in (d). The Commission found that the intrastate rates which it was prescribing will be "reasonable" (fdg. 3). It also found that these rates are "necessary to the operation of" an adequate and efficient national transportation system. The findings are that the prescribed intrastate rates constitute no more than a fair contribution from intrastate traffic to the revenues required by the railroads to develop and preserve such a transportation system (fdgs. 5, 6).

Similarly, part of what appellants contend for under (a) and (b) has been found. The Commission has found, as to (a), that under the prescribed rates intrastate traffic would contribute no more than a fair proportion of the railroads' total income (fdg. 6). As to (b), it found that the rate increases authorized in the *Ex Parte 162* and *Ex Parte 166* proceedings were required to enable the railroads to operate efficiently.[25] Ap-

[25] The Commission explicitly so found in *Ex Parte 162* (266 I. C. C. 537, 614).

Its final report in *Ex Parte 166* states that the prior reports in that proceeding are to be considered "integral parts" of the final report (270 I. C. C. 403). The report of April 13, 1948, which granted an interim increase, said that the increase is "required to meet the purposes of the national transportation policy and to conform to the standards of section 15a (2) of the Interstate Commerce Act." 270 I. C. C. 93, 97. See also, 269 I. C. C. 33, 54, 270 I. C. C. 81, 90; 270 I. C. C. 403, 406. This interim increase was substantially the same as that authorized by the final report (270 I. C. C. 93, 98; 270 I. C. C. 403, 456).

pellants' contention in this respect thus comes down to a criticism of the Commission's failure to find, as specific dollar figures, the "contribution" from intrastate traffic which will represent a fair proportion of the railroads' total income, to which (a) refers, and the "amount" of the railroads' revenue requirements, to which (b) refers.

Thus the only issues presented by appellants' attack on the findings are whether the Commission's findings as to the "contribution" to be required of intrastate traffic, and the "amount" of the railroads' revenue needs had to be expressed in specific dollar amounts and whether it was necessary for the Commission to find that the existing intrastate rates were less than compensatory.

C. APPELLANTS' CONTENTION THAT THE FINDINGS ARE INSUFFICIENT MUST BE REJECTED AS INCONSISTENT WITH THE DECISIONS OF THIS COURT AND THE OBJECTIVES OF THE STATUTES

Appellants' attack on the adequacy of the findings is rested almost exclusively on the assumed effect of the decision in *North Carolina* v. *United States,* 325 U. S. 507. In the immediately succeeding subsection of this brief we shall point out that that decision does not have the effect which appellants would ascribe to it. Before doing so, however, we wish to point out that orders of the Commission correcting intrastate rates which cause unjust discrimination against interstate commerce from a revenue stand-

point have been repeatedly upheld by this Court, absent the findings which appellants set forth as being essential. We cite in the footnote (together with citation of the applicable Commission reports) eight unanimous decisions of this Court so holding.[26] In addition, an interpretation of the Act under which such findings would be necessary would cripple the Commission's power to remove such discrimination and would run directly counter to the interpretation which this Court has placed upon the Act when similar questions have come before it. We shall develop this proposition

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[26] *Wisc. R. R. Comm.* v. *C. B. & Q. R. R.*, 257 U. S. 563 (59 I. C. C. 391, 396–7);

New York v. *United States*, 257 U. S. 591 (59 I. C. C. 290, 298–9);

Ga. P. S. Comm. v. *United States*, 283 U. S. 765 (160 I. C. C. 309, 325–7);

Alabama v. *United States*, 283 U. S. 776 (113 I. C. C. 389, 430–5);

La. P. S. Comm. v. *T. & N. O. R. R.*, 284 U. S. 125 (155 I. C. C. 247, 279–83);

United States v. *Louisiana*, 290 U. S. 70 (186 I. C. C. 615, 627, 642–3);

Florida v. *United States*, 292 U. S. 1 (186 I. C. C. 157, 187–90);

Illinois Commerce Comm. v. *United States*, 292 U. S. 474 (195 I. C. C. 89, 116–8).

The only cases upsetting such orders of the Commission are *Florida* v. *United States*, 282 U. S. 194, discussed, *infra*, pp. 38–39, and *North Carolina* v. *United States*, 325 U. S. 507, discussed, *infra*, pp. 41–44.

In one case, *Florida* v. *United States*, 292 U. S. 1, the Commission had found that the existing intrastate rate was not "reasonably compensatory" and did not cover the full cost of the service. See *infra*, p. 38.

in connection with the particular issues raised by appellants' attack.

1. *The Commission was not required to cast its findings in specific dollar figures.*—Appellants' proposed finding (b) presupposes that an order of the Commission in a proceeding under Section 15a requires for its support determination by the Commission of the dollar amount of the additional revenue which the railroads as a whole, or those within a given area, require under the tests and standards of that section. It seems clear that any such limitation upon the Commission's authority would frustrate action by it within any reasonable period of time.

Section 15a is primarily designed to meet the critical problem arising when sharp increases in operating costs, or losses in traffic, or both combined, demand prompt relief if the railroads' resources and credit are to be such that they can maintain adequate transportation service and provide themselves with the new equipment, or make other capital expenditures, promoting efficiency and economy of service. In an unregulated industry, individual managements determine the pricing changes appropriate to changes in economic or competitive conditions. In a regulated field such as rail transportation, and one which is national in scope, machinery must be provided by which over-all rates may be regulated upward or downward as required by changes materially affecting railroad economics. Section 15a provides

that machinery. Certainly the Commission should act thereunder only after painstaking inquiry, and in the *Ex Parte 162* and *166* proceedings involved here it did so act (*supra*, pp. 6–8). But the general nature and vast scope of the inquiry are such that to demand the same precision of findings that would be expected in a proceeding involving particular rates would utterly defeat any hope of even reasonably prompt disposition.

Appellants' proposed finding (a) similarly presupposes that, in a proceeding under Section 13 (4) to remove unjust discrimination against interstate commerce caused by intrastate rates which fall short of making a contribution to railroad revenues comparable to that made by interstate commerce following a rate increase under Section 15a, the Commission may not validly act without determining the dollar amount of the contribution to be made by intrastate traffic. This plainly would be a task so complex and time-consuming that effective action would be paralyzed. See *Illinois Commerce Commission* v. *United States*, 292 U. S. 474, 483.

This Court has firmly rejected any interpretation of Section 15a which would, in practical effect, render it abortive, and it has rejected any like crippling interpretation of Section 13 (4). Under the former section as originally enacted the Commission was directed to fix rates so that the carriers would receive, as nearly as may be,

a fair return upon the value of their property devoted to transportation service. In *Wisconsin Railroad Commission* v. *C. B. & Q. R. R.*, 257 U. S. 563, this Court rejected the contention that the fair return contemplated by Section 15a was on the property used in interstate commerce, segregated from that used in intrastate commerce. It said (p. 588):

> To impose on the Commission the duty of separating property used in the two services when so much of it is used in both, and to do this in a reasonably short time for practical use, as contemplated by the statute, would be to assign it a well-nigh impossible task. This, of itself, prevents our giving the words such a construction unless they clearly require it.

In *United States* v. *Louisiana*, 290 U. S. 70, this Court declined to construe Section 15a as authorizing a rate increase thereunder only if the Commission has determined that the authorized increase is reasonable as to each individual rate subject to the increase. The Court said (pp. 75–76):

> the administrative arm of the Commission [would be] paralyzed, if instead of adjudicating upon the rates in a large territory on evidence deemed typical of the whole rate structure, it were obliged to consider the reasonableness of each individual rate before carrying into effect the necessary increased schedule.

The Court also held that the Commission, in directing an increase in intrastate rates under Section 13 (4) in order that intrastate traffic should contribute its fair proportion of the additional railroad revenue found to be required in a Section 15a proceeding, need not determine that each individual intrastate rate, as increased by the Commission's order, was just and reasonable. The Court said (pp. 78–79): "The administrative difficulties which would preclude performance of the duty imposed by § 15a if the Commission were required to find that each individual rate prescribed is just and reasonable, would similarly prevent compliance with that under § 13 (4)."

In *Florida* v. *United States,* 292 U. S. 1, 9, this Court said:

> The requirement of essential findings as to revenues did not demand an impracticable exactness. Losses through inadequate rates could be shown satisfactorily even though proof of the precise extent of such losses was not available. Reasonable determinations were required and these were made.

In *New York* v. *United States,* 331 U. S. 284, 308, a suggested interpretation of a 1940 amendment to Section 3 (1) of the Interstate Commerce Act was rejected upon the ground that the amendment, if so interpreted, "would not have achieved its purpose," and "such futility" was not to be attributed to Congress.

2. *The Commission was not required to find that existing intrastate rates were less than compensatory.*—The validity of the order entered in the instant case is likewise not dependent upon the making of appellants' proposed finding (c), that the state-prescribed intrastate rates are "less than compensatory or insufficient to cover the full cost of service." It is true that in *Florida* v. *United States,* 292 U. S. 1, 9, this Court noted that the Commission had found that the state-prescribed intrastate rate was abnormally low and less than "reasonably" compensatory.[27] But there is nothing to indicate that this Court deemed such finding essential to the validity of the Commission's order. The order was entered after additional hearings and findings following reversal of an earlier Commission order in the same proceeding. *Florida* v. *United States,* 282 U. S. 194. The ground for such reversal was that the Commission's finding of unjust discrimination was invalid in the absence of supporting findings that the increase in intrastate rates ordered by the Commission would increase the revenue derived by the railroad from the traffic in question.[28] 282 U. S. at 214–215. After the

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[27] In the instant case the Commission found that the state-prescribed intrastate rates are "abnormally low" (fdg. 5, R. 119).

[28] In the present case the Commission found that the increase in intrastate rates which it prescribed "will substantially increase the [railroad] respondents' revenues therefrom" (fdg. 6, R. 119).

proceeding had been reopened, such findings were made and the order then entered was sustained. 292 U. S. at 9–11.

The first *Florida* case involved a very unusual type of proceeding with respect to unlawful discrimination under Section 13 (4).[29] There had been no antecedent increase in interstate rates by virtue of a Section 15a revenue proceeding. The matter came before the Commission on a complaint filed by the Georgia Public Service Corporation against one railroad, the Atlantic Coast Line, seeking establishment of reasonable rates on logs from points on the railroad's line within Florida to Georgia destinations. In the course of the proceeding the Commission approved a revision in interstate rates proposed by the respondent railroad. It also made a finding, somewhat incidentally, that lower Florida intrastate rates on logs transported by the respondent railroad for corresponding distances would result in unjust discrimination against interstate commerce, and directed an increase in such rates.

Just as there is a "zone of reasonableness" between maximum and minimum interstate rates (*United States* v. *C. M. St. P. & P. R. R.*, 294 U. S. 490, 506) and rates which come within this zone may be unjustly discriminatory (*United*

[29] In *United States* v. *Louisiana*, 290 U. S. 70, 79, this Court referred to some of the exceptional circumstances under which the question of discrimination was presented in *Florida* v. *United States*, 282 U. S. 194.

States v. *Illinois Central R. R.*, 263 U. S. 515, 524), there is a like zone within which intrastate rates may be reasonable and nevertheless unjustly discriminatory. While Section 13 (4) does not empower the Commission to raise rates above a reasonable level (*United States* v. *Louisiana*, 290 U. S. 70, 78), equally the Commission's power to raise intrastate rates is not limited to those which are less than compensatory. If the Commission's power were so limited, the whole burden of a general upward rate adjustment pursuant to the mandates of Section 15a would be cast upon interstate commerce, in complete frustration of the fair apportionment of this burden between interstate and intrastate traffic contemplated by the grant of power in Section 13 (4) to prevent unjust discrimination against interstate commerce. *Wisconsin Railroad Commission* v. *C. B. & Q. R. R.*, 257 U. S. 563, 585–586; *Florida* v. *United States*, 282 U. S. 194, 211; *United States* v. *Louisiana*, 290 U. S. 70, 74–75.

This Court has upheld the power of the Commission under Section 3 (1) of the Act to increase rates which discriminate against a region or territory even though the rates ordered to be increased were compensatory. *New York* v. *United States*, 331 U. S. 284, 344–347. The principal ground for this conclusion was that, if the section did not authorize such action, there would be cases in which the Commission would be "powerless" to deal with discrimination of the kind

outlawed, *Id.*, p. 346. Like considerations are applicable here.

D. *NORTH CAROLINA* V. *UNITED STATES*, 325 U. S. 507, DOES NOT ESTABLISH THAT THE FINDINGS IN THE PRESENT CASE ARE INSUFFICIENT TO SUPPORT THE COMMISSION'S ORDER

Since appellants' attack upon the findings is grounded upon *North Carolina* v. *United States*, 325 U. S. 507, it is important to examine closely the issues there presented and decided. The contested Commission order required four of the railroads operating in North Carolina to raise their intrastate passenger coach fares to 2.2 cents per mile. The first ground upon which this order was held invalid was that the Commission had never made findings supported by evidence that it was "reasonable and lawful" for railroads in southern territory to charge more than 1.65 cents per mile for interstate coach passengers.[30] 325

[30] While we are here concerned with the ground of decision rather than the correctness of the Court's conclusion, we call attention to matters which led the Court to its conclusion. In 1936 the Commission, after a comprehensive investigation, had ruled that passenger coach fares will violate Sections 1 and 15a of the Act to the extent that they *exceed* two cents per mile, but left "to the discretion" of railroads operating in southern territory continuance of coach fare of 1.5 cents a mile. 214 I. C. C. 174, 255, 256. Early in 1942 the Commission granted a 10% increase in all existing passenger fares to enable the railroads to render adequate and efficient transportation service, an increase which resulted in a fare of 1.65 cents per mile for railroads in southern territory and a fare of 2.2 cents per mile for other railroads. In July 1942 the Commission amended its prior order, without hearing or taking evidence, so as to authorize in southern territory a coach passenger fare of 2.2 cents per mile. 325 U. S. at 516–517.

U. S. at 518. Obviously if, as this Court concluded, the 2.2-cent rate had never been validly determined to be reasonable and lawful for interstate commerce in the territory concerned, this rate could not be prescribed for intrastate commerce, since one of the elements for finding unjust discrimination, a lawfully determined higher interstate rate, was lacking.

The Court also held the Commission's order invalid upon the following grounds: Section 13 (4) does not authorize the Commission to raise intrastate rates above a reasonable level. There was evidence before the Commission that the 2.2 cent rate which it prescribed for intrastate passenger coach traffic in North Carolina was, as to the four railroads involved, above a reasonable rate level for this traffic. Some of the evidence mentioned by the Court was that the four railroads in question were "more prosperous than they had ever been in their history;" that they were in the highest excess profits bracket; and that their average revenue increase since 1936 had been approximately 250%. 325 U. S. at 519. The significance of this evidence was emphasized by the fact that as to other railroads not showing such high profits the State Commission had allowed increases in intrastate rates corresponding to those authorized for interstate rates. The Interstate Commerce Commission made no findings with respect to this compelling evidence that the intrastate rate which it prescribed was above

a reasonable level; in the absence of such findings, the finding that an intrastate rate which was less than 2.2 cents per mile unjustly discriminated against interstate commerce could not stand. 325 U. S. at 520.

The Court also pointed out that the Commission had not made certain other findings (325 U. S. at 515–516), and those mentioned as not having been made are substantially the ones set forth by the present appellants as being essential to the validity of the order here in question. Clearly the absence of such findings was of significance to the validity of an order under Section 13 (4) which was subject to all of the infirmities found to exist in the *North Carolina* case. But the Court in that case did not expressly hold, and we believe that it did not intend to intimate, that such findings are essential to the validity of any order under Section 13 (4). It intended no more, we think, than to indicate the kind of findings which, had they been made, might have served to overcome the compelling force of the showing as to the profits of the four railroads under the existing rates.

The fundamental vice which the Court found in the Commission's order in the *North Carolina* case was that the Commission "relied on the mere existence of a disparity" (325 U. S. at 516) between an interstate rate, the reasonableness of and necessity for which had not been determined by the Commission on the basis of evidence and

findings, and an intrastate rate which was already yielding usually high profits to these particular railroads. In the present case the Commission did not rely on "the mere existence of a disparity." On the contrary, it has found explicitly and after the fullest hearings that the new interstate rates are reasonable and necessary to provide adequate revenues. Its conclusion as to the amount necessary was made on the assumption of corresponding increases in intrastate rates (*supra,* p. 7). The Commission further made a detailed examination of interstate and intrastate rates on numerous representative commodities (*supra,* p. 12) and determined that the relationship between interstate and intrastate rates which had existed over a long period of years prior to its order in *Ex parte 166* afforded a fair criterion for the appropriate contribution to be made by intrastate traffic (*infra,* p. 45). It further found that operating conditions within Florida were not more favorable than for Southern territory generally and that costs of operation on Florida intrastate traffic, if anything, exceeded comparable costs on interstate traffic (*supra,* pp. 13–14, 29). It investigated and made findings as to the rate of profit of the Florida railroads on their entire business, averaging 2.9% on depreciated investment in 1948 (*supra,* p. 14.) On the basis of the foregoing it concluded that intrastate rates lower than those pre-

scribed by it would be "abnormally low," would not contribute their fair share to the carriers' revenue needs, and would therefore discriminate against interstate commerce.

The basis for the order fixing minimum Florida intrastate freight rates is appropriately spelled out in the Commission's report, as follows (R. 112):

> Our power to require an increase in intrastate rates depends upon whether intrastate traffic is contributing its fair share of the earnings required to meet maintenance and operating costs and to yield a fair return on the value of the property devoted to the transportation service, both interstate and intrastate. Respondents are * * * merely [seeking] to secure a contribution to maintenance and operating costs, including taxes, more nearly proportionate to the contribution thereto made prior to the increases in Ex Parte 162 and Ex Parte 166. *We may properly use such prior contribution as a valid criterion of fairness,* in the light of which the Florida intrastate rates and charges in 1947 and 1948 afforded a disproportionately small share of the revenue required to meet the costs of the service in Florida. This condition has been aggravated by the continuing rise in operating expenses following Ex Parte 162 and Ex Parte 166, which impelled us to authorize additional increases in freight rates and charges in Ex Parte 168. [Italics supplied.]

We submit that in the light of the Commission's findings discussed above, and of all the circumstances of this case, the standard used by the Commission was an appropriate one and that nothing in the *North Carolina* case precluded its use.

Whether the findings proposed by appellants are essential raises an issue of far-reaching importance. The over-all plan of the statute is that the railroads should receive sufficient revenue to enable them to operate efficiently. Revenues derived from the transportation service rendered, whether it be interstate or intrastate, provide the means for carrying on both interstate and intrastate transportation. Both alike benefit when the railroads obtain additional revenue needed for adequate and efficient service. It is thus a part of the statutory scheme that intrastate traffic bear its fair share of the whole transportation cost, and Section 13 (4) provides authority for accomplishing this end. That purpose will necessarily be defeated if the findings requisite for valid action under Section 13 (4) are so onerous as to cripple its effective application and enforcement.

II

THE COMMISSION, IN RAISING INTERSTATE FREIGHT RATES AND INTRASTATE FLORIDA RATES UPON THE BASIS OF THE RAILROADS' REVENUE NEEDS AND THE FAIR PROPORTION THEREOF TO BE CONTRIBUTED BY FLORIDA INTRASTATE FREIGHT TRAFFIC, PROPERLY TOOK INTO ACCOUNT THE RAILROADS' DEFICITS IN THEIR PASSENGER OPERATIONS

Section 15a directs the Commission, when prescribing just and reasonable rates, to give due consideration to the railroads' need of revenues sufficient to enable them to provide adequate and efficient "railway transportation service." The "national transportation policy" of the Act directs that all of its provisions be administered to the end of developing a "national transportation system" adequate to the country's needs. Railway transportation service includes both freight and passenger service. The revenue required for furnishing adequate and efficient transportation service is, therefor, necessarily measured by the railroads' total operating costs and capital needs in providing both kinds of service.

When rates are fixed under Section 15a in order to provide for the railroads the revenue required for adequate and efficient transportation service, it would obviously be desirable, if it were feasible, to fix freight rates primarily on the basis of the cost of furnishing freight service and to fix passenger rates primarily on the basis of the costs incident to passenger service. But in

revenue proceedings under that section the Commission has been confronted with the hard fact that in every year since 1929, except for the war years 1942–1945, railroad passenger operations have, as a whole, been conducted at a loss. *Increased Freight Rates, 1948,* 276 I. C. C. 9, 36. Another hard fact confronting the Commission has been that, for the most part, no actual increase in passenger revenues was likely to result from an increase in passenger fares because of the likelihood that an increase would accelerate the enormous inroads upon rail passenger traffic resulting from greater travel by private passenger automobile, motor bus, and air. *Ibid.* Thus, short of authorizing general abandonment of passenger service, the Commission could validly conclude that the only measure available was to attempt to increase revenues from some other source.

In view of these factors, the Commission has for a long period of time taken account of low net operating income or deficits in passenger service when fixing freight rates in Section 15a revenue proceedings.[31] As early as July 1926 the

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[31] Appellants recognize (Br. 18) that the position which the Commission took in 1914 in *Five Percent Case*, 31 I. C. C. 351, that it would not be justified in increasing freight rates to take care of losses incurred in passenger service, represents the position "formerly held" by the Commission. It has consistently ruled, subsequent to the enactment of Section 15a in 1920, that its ruling in the *Five Percent Case* is no longer applicable.

Commission declared (*Revenues in Western District,* 113 I. C. C. 3, 23):

> The freight and the passenger services are both essential and both may be subjected to reasonable rates and charges to produce the fair aggregate return authorized by the law even though thereby a higher rate of return may be exacted from the one than from the other.

In a general freight increase proceeding decided in 1931, the Commission said:

> Foremost among the problems to be solved is that presented by the passenger service. Broadly speaking, this service for the country as a whole fails by something like $450,000,000 annually to contributing its proportionate share toward taxes and return on railroad property. The close similarity of this figure to the amount of money which the carriers estimated that they would realize from the 15 percent increase [in freight rates], if no loss of traffic resulted, is striking. [*Fifteen Percent Case, 1931,* 178 I. C. C. 539, 584.]

It added that in its view *Northern Pacific Ry.* v. *North Dakota,* 236 U. S. 585, and *Norfolk & Western Ry.* v. *West Virginia,* 236 U. S. 605 (discussed *infra,* pp. 51–52), do not prevent "imposition of a burden upon one form of service to compensate for an inevitable deficiency in earnings of another form of service." 178 I. C. C. 539, 565.

In another proceeding of the same kind, decided in 1938, the Commission said that it had repeatedly declined to accede to the proposition that it was without authority to increase freight rates "to correct deficiencies in aggregate earnings growing out of the inability of the passenger business to meet its full share of the revenue burden." *Fifteen Percent Case, 1937–1938*, 226 I. C. C. 41, 54.

In the recent *Ex Parte 168* proceeding, *Increased Freight Rates, 1948*, 276 I. C. C. 9, 35, the Commission said:

> While we regard it as "trite to say that each particular service, coach, sleeper, parlor car, and head end, should as nearly as may be pay its own way and return a profit" * * * yet, if passenger service inevitably and inescapably cannot bear its direct costs and its share of joint or indirect costs, we have felt compelled in a general rate case to take the passenger deficit into account in adjustment of freight rates and charges. *Both the freight and passenger services are essential, and revenue losses or deficits on the one necessarily must be compensated by earnings on the other if the carriers are to continue operations.* [Italics supplied.]

This Court has never even intimated that this long continued policy of the Commission is not a proper exercise of the discretion entrusted to it. On the contrary, in *United States* v. *Louisiana*,

290 U. S. 70, the Court upheld an order of the Commission under Section 13 (4) prescribing increases in Louisiana intrastate freight rates corresponding with the increases in interstate freight rates which had been authorized in *Fifteen Percent Case, 1931, supra,* largely in order to make up for operating deficits in passenger revenues.

The scope of the Commission's discretion in this regard was explicitly recognized by four Justices in *North Carolina* v. *United States,* 325 U. S. 507. That case involved the limited period when passenger traffic was exceptionally profitable because gasoline rationing, movement of men in connection with military service, and other wartime conditions brought a vast increase in passenger traffic. None of the views expressed by the Court in that case appear to be opposed to the following statement in the dissenting opinion (325 U. S. at 534):

> The Commission may conclude that the carriers' required revenue may best be obtained from intrastate passenger fares rather than from freight rates. The reverse was once true. Cf. 214 I. C. C. at 227. These are matters for Commission decision.

Appellants cite *Northern Pacific Ry.* v. *North Dakota,* 236 U. S. 585, and *Norfolk & Western Ry.* v. *West Virginia,* 236 U. S. 605, as compelling the conclusion that the Commission, when fixing freight rates in a Section 15a revenue proceeding,

may not give consideration to railroad passenger deficits. The holding in these cases was that due process constitutional limitations forbid a state from fixing a nonremunerative rate for particular traffic, that in determining this question all costs attributable to the traffic must be considered, and that the nonremunerative rate is not rendered valid by reason of the possibility that the carrier's losses thereunder might be recoverable from its charges for other transportation.

We submit that very different considerations apply to the matter here in issue. Congress has decreed that rates are to be fixed with reference to receipt by the carriers of sufficient revenue to enable them to maintain transportation service adequate to the country's needs. It has left to the Commission the duty of determining the rate adjustments, within the zone of reasonableness, appropriate for giving effect to this mandate. This peculiarly is a matter for administrative judgment. The Commission transcends no constitutional or statutory limitation when, in considering the railroads' over-all revenue needs, it takes account of their total operating costs, and makes an upward rate adjustment as to traffic which will yield more revenue under a higher rate, without adjusting upward rates on traffic where a rate increase would not have this effect.

The nation-wide upward adjustment of interstate freight rates which the Commission approved in *Ex Parte 162* and *166* necessarily provided the frame of reference for the increase which it made in Florida intrastate freight rates, in order that Florida intrastate traffic should contribute its fair proportion of the carriers' needed additional revenue. Passenger deficits were not, as such, a factor in the prescribed intrastate rate increase. They were a factor in this increase only in the sense that they were a factor in the antecedent increases in interstate rates approved pursuant to Section 15a proceedings. But, as already shown, the Commission properly took passenger deficits into account in authorizing the interstate freight rate increases. It follows that its order increasing Florida intrastate freight rates is not invalidated by reason of the consideration which it gave to railroad passenger deficits when it authorized in *Ex Parte 162* and *166* general upward adjustments in interstate freight rates.

The Commission, when it determined in the instant case that Florida intrastate freight rates should be increased, said in its report (R. 113):

> Increased passenger deficits * * * is a condition bearing alike upon intrastate and interstate rates. *There is here no claim or showing that the passenger deficits of the*

> *respondents do not result from intrastate as well as interstate operations,* and the passenger deficit of the East Coast, which operates entirely within Florida, would appear to indicate to the contrary.
>
> The record affords no justification for a difference in treatment in this respect between Florida intrastate traffic, on the one hand, and interstate traffic to and from Florida, on the other hand. The question of passenger deficits is a serious one for both carriers and shippers, and would become even more serious for interstate shippers if this burden were imposed entirely upon them.

Since the Commission, in the general revenue proceedings (*Ex Parte 162* and *Ex Parte 166*), could validly conclude that an increase in freight revenues was the only feasible means of making up for passenger deficits, it follows that it was also proper for it to conclude, in the Section 13 (4) proceeding, that, in order to avoid discrimination against interstate freight shippers, the burden of the increase should be borne alike by intrastate and interstate freight. A similar order, based on like considerations, was sustained by this Court in *United States* v. *Louisiana* (*supra,* pp. 50–51).

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the judgment of the district court should be affirmed.

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OCTOBER 1952.

APPENDIX

The Interstate Commerce Act, 24 Stat. 379, as amended, 49 U. S. C. 1, *et seq.*, provides in part as follows:

NATIONAL TRANSPORTATION POLICY

It is hereby declared to be the national transportation policy of the Congress to provide for fair and impartial regulation of all modes of transportation subject to the provisions of this Act, so administered as to recognize and preserve the inherent advantages of each; to promote safe, adequate, economical, and efficient service and foster sound economic conditions in transportation and among the several carriers; to encourage the establishment and maintenance of reasonable charges for transportation services, without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices; to cooperate with the several States and the duly authorized officials thereof; and to encourage fair wages and equitable working conditions—all to the end of developing, coordinating, and preserving a national transportation system by water, highway, and rail, as well as other means, adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense. All of the provisions of this Act shall be administered and enforced with a view to carrying out the above declaration

of policy. [49 U. S. C. preceding Sec. 1.]

* * * * *

Sec. 13. (3) Whenever in any investigation under the provisions of this part, or in any investigation instituted upon petition of the carrier concerned, which petition is hereby authorized to be filed, there shall be brought in issue any rate, fare, charge, classification, regulation, or practice, made or imposed by authority of any State, or initiated by the President during the period of Federal control, the Commission, before proceeding to hear and dispose of such issue, shall cause the State or States interested to be notified of the proceeding. The Commission may confer with the authorities of any State having regulatory jurisdiction over the class of persons and corporations subject to this part or part III with respect to the relationship between rate structures and practices of carriers subject to the jurisdiction of such State bodies and of the Commission; and to that end is authorized and empowered, under rules to be prescribed by it, and which may be modified from time to time, to hold joint hearings with any such State regulating bodies on any matters wherein the Commission is empowered to act and where the rate-making authority of a State is or may be affected by the action taken by the Commission. The Commission is also authorized to avail itself of the cooperation, services, records, and facilities of such State authorities in the enforcement of any provision of this part or part III. [49 U. S. C. 13 (3).]

Sec. 13. (4) Whenever in any such investigation the Commission, after full hearing, finds that any such rate, fare, charge,

classification, regulation, or practice causes any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce on the one hand and interstate or foreign commerce on the other hand, or any undue, unreasonable, or unjust discrimination against interstate or foreign commerce, which is hereby forbidden and declared to be unlawful, it shall prescribe the rate, fare, or charge, or the maximum or minimum, or maximum and minimum, thereafter to be charged, and the classification, regulation, or practice thereafter to be observed, in such manner as, in its judgment, will remove such advantage, preference, prejudice, or discrimination. Such rates, fares, charges, classifications, regulations, and practices shall be observed while in effect by the carriers parties to such proceeding affected thereby, the law of any State or the decision or order of any State authority to the contrary notwithstanding. [49 U. S. C. 13 (4).]

* * * * *

Sec. 15a. (2) In the exercise of its power to prescribe just and reasonable rates the Commission shall give due consideration, among other factors, to the effect of rates on the movement of traffic by the carrier or carriers for which the rates are prescribed; to the need, in the public interest, of adequate and efficient railway transportation service at the lowest cost consistent with the furnishing of such service; and to the need of revenues sufficient to enable the carriers, under honest, economical, and efficient management to provide such service. [49 U. S. C. 15a (2).]

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No. 9

In the Supreme Court of the United States

OCTOBER TERM, 1951

WILBUR C. KING, JERRY W. CARTER, AND RICHARD A. MACK, AS AND CONSTITUTING THE FLORIDA RAILROAD AND PUBLIC UTILITIES COMMISSION, APPELLANTS

v.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF FLORIDA

MOTION OF THE UNITED STATES AND INTERSTATE COMMERCE COMMISSION TO AFFIRM

In the Supreme Court of the United States

OCTOBER TERM, 1951

No. 444

WILBUR C. KING, JERRY W. CARTER, AND RICHARD A. MACK, AS AND CONSTITUTING THE FLORIDA RAILROAD AND PUBLIC UTILITIES COMMISSION, APPELLANTS

v.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF FLORIDA

MOTION OF THE UNITED STATES AND INTERSTATE COMMERCE COMMISSION TO AFFIRM

Pursuant to Rule 12, paragraph 3 of the Revised Rules of the Supreme Court, appellees United States of America and Interstate Commerce Commission move that the judgment of the district court be affirmed.

This is a direct appeal from the final judgment, entered on July 17, 1951, of a specially constituted three-judge United States District Court convened pursuant to 28 U. S. C. 1253, 2284, and 2325, denying a petition to set aside

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an order of the Interstate Commerce Commission. That order directed that certain rates and charges covering intrastate transportation of freight in the State of Florida be raised by the same percentages by which the Commission previously had increased interstate freight rates. Appeal was allowed on September 7, 1951, and appeal papers were served on September 12, 1951.

In 1946 and 1947 the Commission, in a series of proceedings (*Ex Parte 162 and 166,* 266 I. C. C. 537, 269 I. C. C. 33, 270 I. C. C. 81, 93, 403) granted certain over-all general percentage increases in interstate freight rates throughout the country. Pursuant to Section 13 (3) of the Interstate Commerce Act, representatives of the State regulatory commissions sat with and advised the Commission in those proceedings. The Florida State Commission's appearance therein was noted. No appeal was taken from those orders.

The railroads operating in Florida then filed a series of petitions with the Florida Commission to have their intrastate Florida rates raised by the same percentages. The Florida Commission granted some but not all of the increases. The railroads then instituted the present proceeding under Section 13 (4) of the Interstate Commerce Act to have the Commission raise their Florida intrastate rates to eliminate the discrepancies. After extensive hearings, the Commission granted most of the requested increases.

Increases in Florida Intrastate Rates, 278 I. C. C. 41.

Section 13 (4) of the Interstate Commerce Act directs the Commission to fix intrastate rates whenever they cause "any undue, unreasonable, or unjust discrimination against interstate or foreign commerce." The Commission, in this case, found that raising the Florida intrastate rates was required to eliminate such discrimination.[1] We submit that its decision is clearly correct, that the findings of the Commission are adequate to support its order, and that this appeal presents no substantial questions justifying further review by this Court.

Appellants' principal contention, rejected by both the Commission and the court below, is that the Commission has no power to increase freight rates generally so as to make up losses from passenger traffic. Concededly, the general increases in interstate freight rates granted in *Ex Parte 162 and 166* reflected passenger revenue

[1] Section 13 (4) also directs the Commission to fix intrastate rates if they cause "any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce on the one hand and interstate or foreign commerce on the other hand." The Commission found that the Florida intrastate freight rates did so prejudice interstate commerce and give unreasonable advantage to intrastate commerce. This question was not passed on by the court below, which remarked, citing *Florida* v. *United States*, 282 U. S. 194, that it was "doubtful whether the Commission's order could be sustained on this ground."

deficits. We submit that the Commission clearly had the power to take this factor into account in fixing freight rates. "As to interstate regulation, the Commission is granted the broadest powers to prescribe rates * * *" *North Carolina* v. *United States,* 325 U. S. 507, 510.

The National Transportation Policy, enunciated by Congress as the Commission's guide to the public interest,[2] indicates that the Commission's obligations to "promote safe, adequate, economical, and efficient service," to "foster sound economic conditions in transportation and among the several carriers," and to insure "reasonable charges for transportation service," contemplates the greatest flexibility in rate regulation. Nor is any limitation on the Commission's power in this regard suggested by the Interstate Commerce Act itself. Section 15a delineates in the broadest terms the Commission's responsibilities in prescribing "just and reasonable rates" for the transportation of "passengers or property" (Section 1 (5)). The Commission is directed to give "due consideration" to the carriers' need for revenues sufficient to provide "adequate and efficient railway transportation service."

The courts, in determining the Commission's powers have recognized the Commission's duty

[2] See *McLean Trucking Co.* v. *United States,* 321 U. S. 67, 82.

to balance the competing interests involved and to maintain an adequate national transportation system. Thus, this Court has held that the Commission's determination under Section 1 (18)–(20) of whether a particular railway line is to be abandoned is to be made "upon a balancing of the respective interests" of the localities on the line proposed to be abandoned and of the carrier itself. *Colorado* v. *United States,* 271 U. S. 153, 168–169. Abandonment will not be authorized merely because the particular line is unprofitable, "the effort being to decide what fairness to all concerned demands." *Ibid;* cf. *Alabama Public Service Commission* v. *Southern Railway Company,* 341 U. S. 341, 347, and see concurring opinion pp. 352–355. And almost 30 years ago, in the *New England Divisions Case,* 261 U. S. 184, this Court upheld the Commission's power, in making a just division of joint rates under Section 15 (6), to consider the financial needs of a weak road and to give it a share of a joint return larger than its contribution to revenues as between the parties would suggest, in order to maintain it in effective operation as part of an adequate public transportation system.

We submit that the development, coordination, and preservation of a national transportation system adequate to meet the Nation's commercial, postal, and military needs clearly requires ade-

quate passenger service.[3] If such service cannot be provided without raising freight rates, the Commission has the power to make the appropriate increases.[4]

Section 13 (4) of the Act authorizes the Commission "to raise intrastate rates so that the intrastate traffic may produce its fair share of the earnings required to meet maintenance and operating costs and to yield a fair return on the value of property devoted to the transportation service, both interstate and intrastate." *United States* v. *Louisiana*, 290 U. S. 70, 75; *Florida* v. *United States*, 292 U. S. 1, 5. In other words, interstate commerce is discriminated against when intrastate commerce fails to bear its proper share of the total revenue requirements of the carriers needed for efficient operation. If increases in interstate freight rates may be made on the basis of the over-all needs of the carriers—

[3] As the Commission itself has pointed out: "Both the freight and passenger services are essential, and revenue losses or deficits on the one necessarily must be compensated by earnings on the other if the carriers are to continue operations." *Increased Freight Rates, 1948*, 276 I. C. C. 9, 35.

[4] The Commission cases cited by appellants purportedly showing that the Commission has required each branch of service to "pay its way" reflect an earlier policy long since abandoned. In recent years the Commission has treated the revenue requirements of the railroads in terms of their over-all operations, and has not denied increases to one category of service because they were needed to offset losses incurred the other. See *Increased Freight Rates, 1948*, 276 I. C. C. 9, 32-35.

including needs resulting from deficits in passenger operations—intrastate freight rates may be adjusted so that intrastate freight bears its fair share of the increased burden.

The Commission found here that the intrastate rates were not contributing their fair share of the revenues required by the carriers to render "adequate and efficient service" and to "operate profitably." Such findings, supported by substantial evidence (as the lower court found), sustain the Commission's order (*North Carolina* v. *United States,* 325 U. S. 507, 514), and will not be reexamined by this Court. *Florida* v. *United States,* 292 U. S. 1, 12. Appellants' argument that the Commission cannot consider passenger deficits in fixing intrastate freight rates would nullify the Congressional policy of eliminating intrastate rate discriminations against interstate commerce. To whatever extent the Commission is denied the power to make intrastate commerce bear its fair share of the carrier's total revenue requirements, the burden on interstate commerce and the resulting discrimination are correspondingly increased.

Appellants also contend that the Commission's order is defective for failing to find the total revenues required by the carriers, and what contribution intrastate commerce should make thereto. This argument apparently rests upon a misconception of the holding in *North Carolina* v.

United States, supra. The Court there vacated a Commission order raising North Carolina intrastate passenger fares to the level previously fixed for interstate travel because "not based on adequate findings." It held that a mere discrepancy between intrastate and interstate rates did not of itself constitute discrimination against interstate commerce. In reaching this conclusion the Court noted that there was considerable evidence from which the Commission might have found that the intrastate rates constituted a fair contribution to the carriers' total revenue requirements, but that "it made no findings on this subject at all." The Court pointed out that the railroads concerned "were more prosperous than they had been in their history," and were in the highest excess profit tax bracket.

We submit that the Commission's findings in the instant case meet the requirements laid down in the *North Carolina* case. Contrary to appellants' contention, there is a great deal more in the record than a mere disparity of rates to support the Commission's order. The Commission found that: (1) the intrastate rates were "abnormally low" and were "not contributing their fair share to the revenues required" by the carriers "to enable them to render adequate and efficient service and to operate profitably" (Fdg. 5). (2) The increased intrastate rates "will not exceed a just and reasonable level" (Fdg. 3)

and "will constitute not more than a fair proportion of respondents' [the carriers'] total income" (Fdg. 6). (3) Maintenance of the lower intrastate rates will cause "in all instances, unjust discrimination against interstate commerce" (Fdg. 7 (1)). The carriers' 1948 average rate of return of 2.29 percent before and 2.91 percent after depreciation hardly reflects unbounded prosperity. To the contrary, the Commission concluded that the carriers needed the additional $915,325 intrastate revenues to "operate profitably."

If appellants are contending that the Commission must make precise dollar findings,[5] they are demanding an "impracticable exactness" instead of the "reasonable determinations" that the realities of the situation call for. *Florida* v. *United States*, 292 U. S. 1, 9. We submit that the Commission's findings, read in conjunction with its report, cf. *United States* v. *Louisiana*, 290 U. S. 70, 80, fully meet the standards promulgated in *North Carolina* v. *United States*.

It is one of the unfortunate facts of railroad life that for many years passenger operations have been unable to "pay their way," and that

[5] The carriers found it "impractical" to produce separate figures at the hearings segregating revenues, operating costs and property values as between interstate and intrastate traffic, and the Commission stated that they "would serve no useful purpose." 278 I. C. C. 66. Cf. *Illinois Commerce Commission* v. *United States*, 292 U. S. 474, 483.

freight rates have had to absorb the deficit.[6] Cf. *Increased Freight Rates, 1948*, 276 I. C. C. 9, 32–40. If intrastate freight rates do not assume their fair share of this passenger deficit, interstate freight rates will have to bear the entire burden, including that created by intrastate passenger deficits.[7] Thus, denial of the Commission's power to make appropriate increases in intrastate freight rates would make further interstate increases inevitable, thereby intensifying the discrimination against interstate commerce.

For the foregoing reasons, it is evident that this appeal presents no substantial questions. It is therefore respectfully submitted that the judgment of the district court should be affirmed.

(s) Philip B. Perlman,
PHILIP B. PERLMAN,
Solicitor General.

(s) Daniel W. Knowlton,
DANIEL W. KNOWLTON,
Chief Counsel,
Interstate Commerce Commission.

SEPTEMBER 1951.

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[6] The aggregate deficit from passenger operations of Class I railroads in the United States in 1949 was approximately $643,000.00. *64th Annual Report of the Interstate Commerce Commission* 5.

[7] The Commission concluded (278 I. C. C. 68): "There is here no claim or showing that the passenger deficits of the respondents do not result from intrastate as well as interstate operations, and the passenger deficit of the East Coast, which operates entirely within Florida, would appear to indicate to the contrary."

U. S. GOVERNMENT PRINTING OFFICE, 1951

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Before the

Supreme Court of the United States

Wilbur C. King, Jerry W. Carter, Richard A. Mack, as and constituting the Florida Railroad and Public Utilities Commission,
Appellants

v.

United States of America and Interstate Commerce Commission,
Appellees.

No. 9

October Term 195[illegible]

MOTION
FOR LEAVE TO FILE A BRIEF, AMICUS CURIAE

on behalf of
Shippers and Two Railroads in support of Appellants.

F. C. HILLYER, Attorney
227 W. Forsyth St.
Jacksonville 2, Fla.

April 25, 1952.

THE MILLER PRESS JACKSONVILLE, FLA.

Before the

Supreme Court of the United States

King v. United States
No. 444, October Term 1951

Motion for Leave to File a Brief Amicus Curiae

Many Florida shippers and receivers of intrastate freight, and Two Railroads hereinafter described, and hereinafter referred to for brevity as the Shippers, present this motion seeking permission of the Court to file a brief amicus curiae in the above entitled proceeding, and respectfully represent to this Court that:

I.C.C. No. 30140

A number of non-profit civic freight traffic associations, such as and including the Florida Rate Conference, Broward County Traffic Association, Greater Miami Traffic Association, Jacksonville Traffic Bureau, Traffic Bureau of the Chamber of Commerce of St. Petersburg, Florida, Tampa Traffic Association, and groups of shippers, such as and including the Florida Lumber and Mill Work Association, Inc., Jacksonville Warehousemen's Association, and receivers of Forest products, Fertilizer, Sugar Cane, etc., and two respondent Railroads, were active interveners in support of the Florida Railroad and Public

Utilities Commission in the proceeding before the Interstate Commerce Commission, entitled **"Increases in Florida Intrastate Rates,"** 278 I.C.C. 41, I.C.C. Docket No. 30140.

The Two Railroads were the Live Oak, Perry & Gulf Railroad Company and the South Georgia Railway Company.

The Shippers, on whose behalf this motion is filed, are among those described in the Interstate Commerce Commission's report as "many protesting shippers" (278 I.C.C. 61) and "various shippers and their organizations" (278 I.C.C. 66).

The order of the Interstate Commerce Commission in that proceeding, No 30140, required that the railroads increase their intrastate rates, notwithstanding the orders of the Florida Railroad and Public Utilities Commission. The effect of that order has placed the burden of additional transportation charges upon the Shippers of Florida.

Fed. Dis. Ct. No. 292

The Florida Railroad and Public Utilities Commission petitioned a Three-Judge District Court for the Northern district of Florida, Tallahassee Division, seeking permanently to enjoin, set aside and annul the Order of the Interstate Commerce Commission in No. 30140, which required that the railroads increase their Florida intrastate rates (Case No. 292-E-Civil).

The Shippers and the Two Railroads intervened in No. 292 on behalf of the Florida Commission.

The opinion of District Judge Devane, for the Three-Judge Court, in paragraph 1, refers to the intervention in that proceeding of the Shippers as parties plaintiff. (See opinion dated June 29, 1951.)

S. Ct. No. 444

The Florida Railroad and Public Utilities Commissioners appealed from the decision of the Three-Judge District Court.

On January 2, 1952, the Supreme Court noted probable jurisdiction. 72 S. Ct. 296.

The Shippers are informed and believe that the case will not be reached before the October term of 1952.

Consent of the Parties

In compliance with Rule 27, paragraph 9 of the rules of the Supreme Court of the United States, the Shippers sought the written consent of all parties to the case to the filing of a brief, amicus curiae.

The Honorable Philip B. Perlman, Solicitor General, by letter of January 23, 1952, consented for appellees.

Allen Crenshaw, Esq., Assistant Chief Counsel of the Interstate Commerce Commission, by letter of January 25, 1952, agreed.

By letter of January 25, 1952, Honorable Lewis W. Petteway, General Counsel, Florida Railroad and Public Utilities Commission, representing the appellants, consented.

Frank W. Gwathmey, Esq. attorney for Atlantic Coast Line Ry. Co., et al. (not including the L. O. P. & G. and the So. Ga. Ry.) by letter of February 26, 1952, expressed his unwillingness, on the grounds that: the shippers did not join in the appeal; that the law will be adequately presented by the Florida Commission; and that the filing of such a brief would impose an added and unnecessary burden upon the Court as well as upon the Appellees.

By letter of March 8, 1952, the Shippers were advised by the Clerk of the Supreme Court that they would be required to file a printed motion for leave to file such a brief.

POINT I

The Shippers ask that the Supreme Court rule that the railroads, represented by Mr. Gwathmey, not being defendants in No. 292, the case before the Three-Judge District Court below, and not being named as appellees in the No. 444 on appeal, are not "parties to the case" within the provision of rule 27, paragraph 9; and that the consent of the railroads was not necessary to the filing of a brief, amicus curiae, by the Shippers and the Two Railroads.

POINT II

The interest of the Florida Commission, Appellant in this proceeding, bears primarily upon the question of adjective law, viz., whether jurisdiction over these Florida intrastate rates was lawfully exercised by the Interstate Commerce Commission or the Florida Railroad and Public Utilities Commission.

The Shippers have confidence in the ability of the

Florida Commission to present and support the five assignments of error in this appeal. However, the Shippers' interests bear primarily upon a question of substantive law, viz.; the quantum of the charges which they must pay and bear, in addition to their interest in preserving the jurisdiction of the Florida Commission over Florida intrastate rates.

The Shippers and the Two Railroads desire to supplement the brief to be filed on behalf of the Florida Commission with a Brief presenting additional facts of record and arguments upon the assignments of error, from the viewpoint of the shipping public and the Two Railroads.

Wherefore, the Shippers and the Two Railroads, intervening plaintiffs in the Three-Judge Case below, ask permission to file a brief amicus curiae.

Respectfully submitted,

F. C. HILLYER, Attorney for Shippers, and Two Railroads:

Florida Rate Conference
Broward County Traffic Association
Greater Miami Traffic Association
Jacksonville Traffic Bureau
The Traffic Bureau of the Chamber of Commerce of St. Petersburg, Florida

Tampa Traffic Association

Florida Lumber and Mill Work Association

Jacksonville Warehousemen's Association

Truman Fertilizer Company

Wilson & Toomer Fertilizer Company

U. S. Sugar Corporation.

Live Oak, Perry & Gulf Railroad Company

South Georgia Railway Company

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing printed motion for leave to file a brief, amicus curiae, on behalf of the Shippers, in **King v. United States** No. 444, October Term, 1951, by mailing, by first class mail, a copy thereof properly addressed to each of the appellants and appellees and to Mr. Frank W. Gwathmey attorney for Atlantic Coast Line Railroad Company, et al.

Dated at Jacksonville, Fla., this ..... day of April, 1952.

F. C. Hillyer

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Supreme Court of the United States

OCTOBER TERM, 1952

No. 9

WILBUR C. KING, JERRY W. CARTER AND RICHARD A. MACK, as and Constituting the Florida Railroad and Public Utilities Commission, *Appellants*,

v.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL.

Appeal from the United States District Court for the Northern District of Florida

STATEMENT ON BEHALF OF ATLANTIC COAST LINE RAILROAD COMPANY, ET AL., APPELLEES, OF OBJECTION TO MOTION OF F. C. HILLYER, ESQUIRE, FOR LEAVE TO FILE A BRIEF AS AN AMICUS CURIAE.

JAMES A. BISTLINE,
FRANK W. GWATHMEY,
Attorneys for Atlantic Coast Line Railroad Company, et al., Appellees.

May 2, 1952.

Supreme Court of the United States

OCTOBER TERM, 1951.

No. 444.

WILBUR C. KING, JERRY W. CARTER AND RICHARD A. MACK, as and Constituting the Florida Railroad and Public Utilities Commission, *Appellants*,

v.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL.

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STATEMENT ON BEHALF OF ATLANTIC COAST LINE RAILROAD COMPANY, ET AL., APPELLEES, OF OBJECTION TO MOTION OF F. C. HILLYER, ESQUIRE, FOR LEAVE TO FILE A BRIEF AS AN AMICUS CURIAE.

Come now Atlantic Coast Line Railroad Company and other railroads operating in the State of Florida, appellees, and pursuant to the provisions of Paragraph 9 of Rule 27, as amended, file this statement of objection to the motion of F. C. Hillyer, Esquire, for leave to file a brief in this cause as an *amicus curiae* and of reasons for withholding consent:

I.

The Interstate Commerce Commission's order herein complained of, issued July 25, 1950 under the provisions of Section 13(3) and (4) of the Interstate Commerce Act (U.S.C. Title 49, Section 13(3)(4)), relates to the entire body of Florida intrastate freight rates and charges as a whole, as bearing in the aggregate upon the revenues of the Florida railroads. In conformity with the admonitions of this Court in similar proceedings, *United States* v. *Louisiana*, 290 U.S. 70, *North Carolina* v. *United States*, 325 U.S. 507, the Commission embodied in its report, which is made a part of the order, a saving clause expressly reserving to any shipper or other interested party the right to apply for modification of the findings "as to any specific intrastate rates or charges" (278 I.C.C. 41, 74). Nevertheless, erroneously relying upon the contention that specific rates applicable upon particular commodities are in issue, Mr. Hillyer, movant here, appeared in the court below on behalf of various shippers or receivers of freight, as intervening plaintiffs, filed as many as five separate briefs each relating in terms to the rates specifically applicable upon certain particular commodities or classes of traffic in which such interveners are or may be individually interested, and was heard in oral argument. The court below, overruling movant's contention, found and stated in its opinion that such specific rates applicable upon particular commodities are not in issue (Opinion of court below, pages 11, 17 and 18 of appellant's Statement as to Jurisdiction). Such ruling has not been assigned as error on this appeal. No question relating to such specific rates appears in appellant's Statement of Questions Presented. It is believed that the filing by this movant of an *amicus curiae* brief would impose an added and unnecessary burden upon the Court as well as upon these and other appellees.

II.

Movant failed and neglected to avail himself of his opportunity to petition for appeal to this Court or to join in the appeal which was taken by the Florida Railroad and Public Utilities Commission, plaintiff below and appellant here.

III.

Movant has set forth no valid reasons for belief that all facts and questions of law, relevant to the disposition of this case, will not be adequately presented in support of this appeal by the Florida Railroad and Public Utilities Commission, appellant, acting not only on its own behalf but acting also in the interest of the Florida shipping public as a whole (Paragraph 9(c) of Rule 27).

IV.

Movant erroneously alleges that the railroads represented by the undersigned counsel were not defendants in the court below and are not parties to the case on this appeal. Under and by virtue of Title 28, U.S.C. Section 2323, these railroads seasonably filed their motion for leave to intervene as parties defendant and such intervention was duly allowed by order, dated September 26, 1950, of the Judge of the U. S. District Court, Northern District of Florida.

WHEREFORE, it is submitted that Mr. Hillyer's motion for leave to file a brief as an *amicus curiae* should be denied.

Respectfully submitted,

JAMES A. BISTLINE,
FRANK W. GWATHMEY,
Attorneys for Atlantic Coast Line Railroad Company, et al., Appellees.

May 2, 1952.

Certificate of Service.

I hereby certify that copies of the foregoing statement have this day been mailed by first-class mail, properly addressed, to F. C. Hillyer, Esq., 227 West Forsyth Street, Jacksonville 2, Fla.; Lewis W. Petteway, Esq., General Counsel, Florida Railroad and Public Utilities Commission, Tallahassee, Fla.; Allen Crenshaw, Esq., Assistant Chief Counsel, Interstate Commerce Commission, Washington 25, D. C., and Honorable Philip B. Perlman, Solicitor General of the United States, Department of Justice, Washington 25, D. C.

Dated at Washington, D. C., this 2nd day of May, 1952.

FRANK W. GWATHMEY.

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In the Supreme Court of the United States

OCTOBER TERM, 1952

No. 9

WILBUR C. KING, JERRY W. CARTER and RICHARD A. MACK, as and constituting the Florida Railroad and Public Utilities Commission,

Appellants,

vs.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, et al.,

Appellees.

Appeal from the United States District Court for the Northern District of Florida

---

Brief on Behalf of the State of Montana and the Board of Railroad Commissioners of the State of Montana, Amicus Curiae

---

ARNOLD H. OLSEN, *Attorney General of the State of Montana*

CHARLES V. HUPPE, *Assistant Attorney General*

EDWIN S. BOOTH, *Secretary-Counsel of the Board of Railroad Commissioners of the State of Montana, and Special Assistant Attorney General of the State of Montana*

Attorneys for the State of Montana, Amicus Curiae

THUNDER'S HELENA

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In the
Supreme Court of the United States

OCTOBER TERM, 1952

No. 9

WILBUR C. KING, JERRY W. CARTER and RICHARD A. MACK, as and constituting the Florida Railroad and Public Utilities Commission,

Appellants,

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Appellees.

Appeal from the United States District Court for the Northern District of Florida

---

Brief on Behalf of the State of Montana and the Board of Railroad Commissioners of the State of Montana, Amicus Curiae

---

PRELIMINARY STATEMENT

This case presents the question of the jurisdiction and authority of the Interstate Commerce Commission over Florida intrastate rates of rail carriers under the provisions of Sections 13 and 15a of the Interstate Commerce Act (49 USCA 13, 15a).

This brief, amicus curiae, is presented by the Attorney General of the State of Montana on behalf of the State and the Board of Railroad Commissioners of the State of Mon-

tana pursuant to paragraph 9 (d) of Rule 27 of this Court's rules. The Board of Railroad Commissioners is the administrative and regulatory board of the state charged with the duty of fixing and approving intrastate rail rates within the state. (Section 72-101 to 72-168, R. C. M., 1947). The Attorney General is designated as the attorney for the Board. (Section 72-124, R. C. M., 1947).

The State of Montana and its proper regulatory board files this brief, amicus curiae, for the reason that the decision in this case involving the intrastate rates of Florida will likewise involve the intrastate rates and the authority of the Interstate Commerce Commission (hereafter referred to as the Commission) over such rates in all other states, including the State of Montana. It is thought that the views of Montana may be useful to the court because of the nationwide effect the decision may have on state regulatory agencies in regulating intrastate rates and the authority of state and federal agencies.

Statements of the case will be contained in the principal briefs. We will therefore confine our references to the facts apparent in the Report of the Commission in *Increases in Florida Intrastate Rates*, 278 I. C. C. 41, (R. 80) and the decision of the United States District Court, Northern District of Florida, in *King, et al., vs. United States, et al.*, 101 F. Supp. 941 (R. 132). As appears in the report and opinion referred to, certain percentage increases had been allowed on interstate freight rates and charges by the Com-

mission in Ex Parte 162, *Increased Railway Rates, Fares and Charges,* 1946, 266 I. C. C. 537, and Ex Parte 166, *Increased Freight Rates,* 1947, 269 I. C. C. 33; 270 I. C. C. 81; 270 I. C. C. 93 and 270 I. C. C. 403. The Florida Commission, in a series of orders, had granted some and denied some of the percentage increases in effect on interstate traffic. Subsequently, the railroads filed a petition with the Commission under Section 13. This petition was assigned Docket No. 30140 and after hearing, the Commission issued its Report, referred to above, which was adverse to the Florida Commission in part. This proceeding was initiated to set aside the Report and subsequent order of the Commission. Montana's interest does not involve any particular rate levels or specific economic problems presented. The interest of Montana is confined to principles applicable on the application of Sections 13 and 15 of the Interstate Commerce Act, when an application for intrastate rate increases is in issue before the Commission. This brief will be so limited.

Further the interest of Montana in the question now before the Court is evidenced by the fact that a similar question has recently been decided by the United States District Court of Montana, in *Montana, et al., vs. United States, et al.* The decisions were rendered on July 24, 1952, and August 13, 1952, and are not yet officially reported, but are reproduced here as an appendix. A permanent injunction was issued preventing the Commission from increasing Montana intrastate rates. At this time, we are not advised as to whether the Montana case will be appealed. Should the case

be appealed many of the points involved will be similar to those raised in this case. Montana is thus vitally interested in principles which may be here established.

SUMMARY OF ARGUMENT

Point 1. Evidence of disparity of interstate rates over intrastate rates is not sufficient to show preference or advantage of persons and localities in intrastate commerce, or prejudice of persons and localities in interstate commerce. The preference and prejudice clause of Section 13 (4) is intended for the protection of persons and localities shipping in interstate commerce. It is not intended to be applied for the carriers' benefit. To permit the carriers to take advantage of this provision of Section 13 (4) would mean that absolute uniformity of rates was required. The Commission Report does not disclose shipper evidence adequate to sustain a statewide order increasing rates because of prejudice or preference, nor is disparity alone sufficient to support such an order on that basis.

Point 2. The evidence as to system revenue conditions and the fact that both interstate and intrastate traffic is handled in the same trains is insufficient to show revenue discrimination. The interstate rates, while declared to be maximum reasonable rates, are not specific reasonable rates and are not binding on the Commission or the carriers. These maximum reasonable rates would now be declared to be minimum rates for intrastate application. There is nothing to show that the intrastate rates cause any detriment to inter-

state commerce which would justify the Commission in increasing the rates. The report does not disclose facts showing, and there is no finding as to what amount of revenue the intrastate traffic should contribute in order to pay its fair share. The Commission's actions appear to be based on the assumption that intrastate rates may be increased on the sole basis of its findings relative to interstate traffic. The states would be deprived of authority over intrastate rates. The interstate maximum would become the intrastate minimum.

Point 3. The system passenger deficits should not be used as the basis for ordering intrastate freight rate increases. The authority over such questions as to interstate rates is separate and apart from the Commission's authority to increase state rates under Section 13 (4) because of the specific conditions there mentioned. Neither Section 15a or the National Transportation Policy declared by Congress amended or otherwise extended the authority over state rates set forth in Section 13 of the Act.

ARGUMENT

INTRODUCTION

This brief will discuss three principal points as shown in the summary. The relative limits of state and interstate authority over intrastate rates is common to all three points. No better or clearer statement of the principles to be applied in connection with Section 13 (4) of the Act can be found than this Court's statement in *North Carolina vs. United States*, 325 U. S. 507, 65 S. Ct. 1260, where it is stated:

"Section 13 (4) does not relate to the Commission's power to regulate interstate transportation as such. As to interstate regulation, the Commission is granted the broadest powers to prescribe rates and other transportation details. * * * *No such breadth of authority is granted to the Commission over purely intra-state rates. Neither Section 13 (4) nor any other congressional legislation, indicates a purpose to attempt wholly to deprive the states of their primary authority to regulate intra-state rates.* Since the enactment of Section 13 (4), as before its enactment, *a state's power over intra-state rates is exclusive up to the point where its action would bring about the prejudice or discrimination prohibited by that section.* When this point—not always easy to mark—is reached, and not until then, can the Interstate Commerce Commission nullify a state-prescribed rate.

"Intra-state transportation is primarily the concern of the state. *The power of the Interstate Commerce Commission with reference to such intra-state rates is dominant only so far as necessary to alter rates which injuriously affect interstate transportation.* * * * * A scrupulous regard for maintaining the power of the state in this field has caused this Court to require that Interstate Commerce Commission orders giving precedence to federal rates must meet 'a high standard of certainty'. * * * * *Before the Commission can nullify a state rate, justification for the 'exercise' of the federal power must clearly appear.'* * * * * And the intention to interfere with the state's rate-making function is not to be presumed, * * * * nor must its intention in this respect be left in serious doubt. * * * * *The foregoing cases also stand for the principle that the Interstate Commerce Commission is without authority to supplant a state-prescribed intra-state rate unless there are clear findings, supported by evidence, of each element essential to the exercise of that power by the Commission.*" (Emphasis supplied)

Any interpretation of evidence or findings relating to increases in intrastate rates because of alleged unlawful preference, prejudice or discrimination should be made in conformity with the above stated principles.

POINT 1.

DISPARITY BETWEEN INTRASTATE AND INTERSTATE RATES DOES NOT ESTABLISH PREFERENCE OR PREJUDICE WITHIN THE MEANING OF SECTION 13 OF THE ACT.

Section 13 (4) (Appendix p. 26) contains two conditions as to when the Commission may raise intrastate rates. If either of the conditions exist, the Commission may remove the detriment to interstate commerce by raising state-made rates. The first condition is when the state-made rate "causes any undue or unreasonable advantage, preference or prejudice as between persons or localities in intrastate commerce on the one hand, and interstate or foreign commerce on the other hand."

Examination of the Commission Report, supra, shows discussion of the disparity existing between interstate and intrastate rates on various class and commodity items. The only comment on evidence as to any testimony by a shipper that it is injured by the disparity is that of a cement company. The Commission states that the carriers' evidence of disparity and the evidence of this one shipper shows that intrastate rates are relatively lower and result in advantage to Florida intrastate points and serious disadvantage to interstate points. This evidence appears to be the sole basis for find-

ings 4 and 7 to the extent that they find undue preference or advantage to intrastate traffic and undue prejudice to interstate traffic.

The District Court in this case, supra, did not follow the Commission as to prejudice and preference. The Court stated,

> "While it is doubtful if the Order of the Interstate Commerce Commission in No. 30140, could be sustained, on the grounds that the action of the Florida Commission resulted in undue and unreasonable advantage, preference or prejudice, as between persons and localities in intrastate commerce in Florida on the one hand and interstate commerce on the other * * *"

The Court then proceeded to decide the case on the basis of revenue discrimination.

On the basis of the report of the Commission, we think the lower court was right in refusing to uphold the Commission as to preference and prejudice. The Montana District Court in its first opinion of July 24, 1952, (Appendix p. 28) found that similar evidence contained in the Commission Report in *Montana Intrastate Freight Rates and Charges*, 284 I. C. C. 167, was insufficient to support a statewide order increasing rates because of preference and prejudice. After further argument, the Montana Court again discussed this question. (Appendix p. 60)

The Court said:

> "It will be noted that notwithstanding what the Supreme Court said in the Georgia Comm. case, supra, in North Carolina v. United States, supra, at page 513, the Supreme Court reaffirmed what it had said in Rail-

road Commission v. Chicago B. & Q. R. Co., 257 U. S. 563, to the effect that a general sweeping order against all intrastate rates may not be predicated upon findings of discrimination against particular localities and business groups made by the Commission under the clause about 'persons' and 'localities', which is a restatement of the Doctrine of the Shreveport case, 234 U. S. 342. As stated in Railroad Commission v. Chicago B. & Q. R. Co., supra: 'In such a case, the saving clause by which exceptions are permitted, cannot give the order validity.' "

In a very comprehensive review of authority under Section 13 of the Interstate Commerce Act, this Court in *North Carolina vs. United States, supra,* speaking of prejudice against interstate traffic, said:

> "In effect, the Commission's holding was, and its argument is here, that Section 13 (4) automatically requires complete uniformity in intra-state and interstate rates. That argument is in short that under our national transportation system interstate travelers and intra-state travelers use the same trains; for a state to fix a lower intra-state rate than the interstate rate is therefore an undue advantage to the intrastate passengers and an unfair discrimination against the interstate passengers. *If Congress intended to permit such an oversimplified form of proof to establish 'unjust discrimination', then its requirement of a 'full hearing' was mere surplusage.* In fact, it need have provided for no hearing at all since it could have easily stated in its legislation that intra-state rates shall never be lower than interstate rates. *The argument of the Commission in this regard runs counter to the language of Section 13 (4), and would call for a declaration by us that Congress intended by this section to reverse the entire transportation history of the nation.*
>
> * * * * *

"In Wisconsin Railroad Commission v. C. B. & Q. R. R. Co., 257 U. S. 563, 579, 580, 42 S. Ct. 232, 234, 235, 66 L. Ed. 371, 22 A. L. R. 1086, this Court refused to sustain a Commission order nullifying all state passenger rates because of a discrimination against interstate travelers and against localities. The Commission had found there as here that state and interstate passengers rode on the same trains in the same car and perhaps in the same seats. It had found there, as it did here, that this constituted an undue discrimination against interstate passengers, and it issued a general sweeping order against all intra-state passenger rates. This Court pointed out that the order went far beyond the principles announced in the Shreveport case, and declined to sustain the statewide order on this phase of the case. See also Florida v. United States, 282 U. S. 194, 208, 51 S. Ct. 119, 122, 75 L. Ed. 291. *So here, the finding that interstate passengers paid higher fares than intra-state passengers for the same facilities is an inadequate support for nullifying state rates on the ground that they constitute unjust discrimination against interstate passengers.*" (Emphasis supplied)

See also:

Wisconsin Railroad Commission vs. C. B. & Q. R. R. Co., 257 U. S. 563, 42 S. Ct. 232, 66 L. Ed. 371, 22 A. L. R. 1086.
Florida vs. United States, 282 U. S. 194, 51 S. Ct. 119, 75 L. Ed. 291.
Florida vs. United States, 292 U. S. 1.

The rule that in order to justify a finding of prejudice and preference under the Interstate Commerce Act, the evidence is required to show detriment to persons or localities in interstate commerce has been repeatedly followed by the Commission. In *Dewey Portland Cement Co. vs. Atchison T. & S. F. Ry. Co.*, 174 I. C. C. 87, 105, the Commission said:

"It is well settled, however, that a mere difference in rates is not enough to establish a case of undue prejudice to interstate shippers or unjust discrimination as against interstate commerce. There must be more; for instance, a further showing that the difference in rates, actual or relative, *is the moving factor in creating undue prejudice to competing shippers in interstate commerce or in casting an undue burden upon or obstructing such commerce.*" (Emphasis supplied)

And in *Intrastate Rates in New Jersey,* 203 I. C. C. 357, 360, the Commission said:

"To show that the rates prescribed by the New Jersey board would be prejudicial to shippers and localities in interstate commerce respondents rely almost entirely on rate comparisons showing that the intrastate rates would be lower than certain comparable interstate rates prescribed in the Eastern case. For example, it is shown that from Martins Creek, N. J., to Jersey City, 80 miles, the prescribed intrastate first-class rate would be 52 cents, while the interstate rate from Portland, Pa., to the same destination for 78 miles is 54 cents. Many more examples of the same kind are set forth in respondents' exhibits. *Findings of undue prejudice and preference may not be predicated merely upon a showing of such disparities. The mere existence of a disparity between particular rates on intrastate and interstate traffic does not warrant the Commission in prescribing intrastate rates,* Florida v. United States, 282 U. S. 194, 212. Shippers who presumably might be adversely affected by the differences stressed by respondents have manifested no concern over them, so far as the record shows, * * *." (Emphasis supplied)

See also:

Mutual Creamery Co. vs. American Railway Express Co., 132 I. C. C. 207, 211.

Associated Bristol Retail Coal Dealers vs. Southern Railway Co., 283 I. C. C. 387.

Dewey Portland Cement Co. vs. Alton E. R. Co., 176 I. C. C. 671, 685.

Emergency Freight Charges in Tennessee, 215 I. C. C. 229.

Rates on Raw Dolomite and Fluxing Stone in Ohio, 188 I. C. C. 495, 511.

Georgia Veneer & Package Co. vs. A. C. L. R. Co., 206 I. C. C. 566, 574.

Emergency Freight Charges in Minnesota, 210 I. C. C. 289, 292.

Increase in Montana Freight Rates and Charges, 255 I. C. C. 131.

Under Court and Commission opinions mere disparity in rates is insufficient to warrant findings of preference and prejudice, which would justify action under Section 13 (4) of the Act. The Commission Report shows nothing further, except as to limited testimony on cement and that testimony would be insufficient to support the statewide rate order made by the Commission. The carrier cannot take advantage of disparity of rates to show prejudice or preference. *To permit the carrier to take advantage of this provision would mean that absolute uniformity of rates is required. This is contrary to law.*

POINT 2.

THE COMMISSION REPORT DOES NOT DISCLOSE EVIDENCE SUFFICIENT TO SHOW DISCRIMINATION AGAINST INTERSTATE COMMERCE OR SUPPORT AN ORDER UNDER SECTION 13 RAISING INTRASTATE RATES.

The revenue needs discussed by the Commission in its Report, supra, disclose that the evidence is solely on a system basis. The figures used included intrastate service in other states as well as interstate. There is no evidence as to intra-

state expenses. The Commission found that both classes of traffic were handled in the same trains, and that transportation conditions incident to intrastate transportation are not more favorable and conditions in part of the state are less favorable than those within southern territory and between Florida and interstate points. (Finding 2). It further found Florida rates are abnormally low, are not contributing their fair share to the carriers' revenue needs, and that the burden cast upon interstate commerce was undue to the extent that intrastate rates are less than the level of increases approved interstate. (Finding 5). The Commission further found that the interstate rates are just and reasonable and intrastate rates increased to the same extent as interstate rates will not exceed a just and reasonable level (Finding 3) and that intrastate rates so increased will not contribute more than a fair proportion of respondents' total revenue. (Finding 6). The Commission then ordered intrastate rates raised as provided in the Report. A savings clause was inserted in the Report, which provides that the findings are without prejudice to the right of any party to apply for modification of any specific intrastate rate on the ground that it is not related to the interstate rates or charges on like traffic in such a way as to contravene the Act.

The District Court in this case, supra, stated that it thought the Commission Order complies with the requirements laid down by this Court in *North Carolina vs. United States*, supra.

The second condition referred to in Section 13 (4) (Appendix p. 26) when the Commission may raise intrastate rates is when such state-made rate causes "any undue, unreasonable, or unjust discrimination against interstate or foreign commerce." This clause relates to the revenue needs of the carrier.

Florida vs. United States, 282 U. S. 194.
North Carolina vs. United States; supra.

THE INTERSTATE RATES ARE NOT SPECIFIED REASONABLE RATES.

In the North Carolina case, supra, this Court said there was doubt as to whether the interstate fare had ever been fixed as the only reasonable rate. This same condition exists with reference to the interstate rates approved in the Ex Parte cases. In each of the orders in Ex Parte 162 and 166, supra, a finding was made that the "rates and charges increased as herein permitted are not considered as prescribed rates, within the meaning of *Arizona Grocery Co. vs. Atchison, T. & S. F. Ry. Co.*, 248 U. S. 370". In 269 I. C. C. 33 (Ex Parte 166) the Commission commented on the right to award reparations if unjust or unreasonable rates result in damages. And in the final order in Ex Parte 166, 270 I. C. C. 403, 454, the Commission recognized the fact that some of the increases might disturb rate relations, and stated that the carriers had given assurance that adjustments would be made and that they expected full and prompt compliance with these representations.

The Commission refused to declare that the interstate rates are specific reasonable rates in the basic cases. It reserved the right to award reparations on any of the rates in the event of complaint. It specifically said that the carriers should make downward revisions in rates for the purpose of re-establishing rate relations or to retain traffic. Under these conditions and based on the Ex Parte Orders, it cannot now find as it did in Finding 3 of this case that the interstate rates are the reasonable and just rates. The most it could say is that, until proven to the contrary, the interstate rates are not above a reasonable maximum level. Nor does the Report, supra, disclose any other basis than the Ex Parte Orders on which the rates may be determined to be reasonable.

This case does not involve the reasonableness of the Commission's action in approving the interstate rates under Section 15a. It may be conceded that the interstate rates are not above reasonable maximum levels. The Commission report does not disclose any cost study or other evidence from which it may be determined that any state rate is less than compensatory or below a minimum reasonable level. *The interstate and intrastate rates may both be within the recognized "zone of reasonableness." United States vs. Chicago M. St. P. & P. Ry. Co.*, 294 U. S. 499, 506, 55 S. Ct. 462, 465. It is true that in Finding 5 the Commission stated that the Florida intrastate rates "are abnormally low". We are unable to find any comments in the report, other than disparity, which support this statement. Apparently, the attempt is

to make findings similar to those approved in *Florida vs. United States*, 292 U. S. 1. but in that case there were cost studies to support the finding that the rates were abnormally low, less than compensatory and insufficient to cover full cost of service. In the Montana Case, (Appendix p. 54), the Court said:

> "Here there is no finding as in Florida v. United States, 292 U. S. 1, 9, that the intrastate rate scale 'was abnormally low and less than reasonably compensatory' . . . . . 'insufficient under all the circumstances and conditions to cover the full cost of the service.' There is nothing in the record before us to disclose a finding that the increased interstate rates and the existing intrastate rates are not both within a 'zone of reasonableness.'"

The Commission action would make the maximum rates it approved, the minimum reasonable rates for the state. Notwithstanding the fact that the carriers may and are expected to adjust the rates to meet conditions, the state commissions would be denied the right to properly consider rates within their own boundaries. *The maximum interstate rate thus at the same time becomes the minimum intrastate rate.* While there will remain a zone of reasonableness for the carriers, such a zone would be eliminated for the states and only one rate will be permitted, i.e., the maximum reasonable rate fixed by the Federal Commission.

THERE IS NO EVIDENCE OR FINDING AS TO THE AMOUNT OF REVENUE REQUIRED FROM INTRASTATE SERVICE.

The Commission Report, supra, is based entirely on system cost figures and disparity in interstate and intrastate rates

existing because Florida did not grant all of the increases granted interstate. The Commission's action rests on its statement appearing in 278 I. C. C. 67, where it says:

> "Our power to require an increase in intrastate rates depends upon whether intrastate traffic is contributing its fair share of the earnings required to meet maintenance and operating costs and to yield a fair return on the value of the property devoted to the transportation service, both interstate and intrastate. Respondents are not seeking an increase in the intrastate revenue sufficient to give them a fair return on the value of their property devoted to freight service but merely to secure a contribution to maintenance and operating costs, including taxes, more nearly proportionate to the contribution thereto made prior to the increases in Ex Parte No. 162 and Ex Parte No. 166. We may properly use such prior contribution as a valid criterion of fairness, in the light of which the Florida intrastate rates and charges in 1947 and 1948 afforded a disproportionately small share of the revenue required to meet the costs of the service in Florida."

This statement shows that the Commission is relying solely on disparity of rates and the erroneous principle that the rates must be maintained in an exact relationship. Such a principle is contrary to its own statement that the rates are maximum only and that carriers should make downward adjustments. The principle further presupposes uniformity of rates contrary to Section 13 and the numerous cases decided.

Florida vs. United States, 282 U. S. 194.

Florida vs. United States, 292 U. S. 1.

North Carolina vs. United States, supra.

The note of the Court appearing in the North Carolina case at 325 U. S. 514 shows that this Court recognized the changed rule of rate making by reason of the 1933 amendment to Section 15a. The note on page 515 of the same case shows that the Court does not consider *Illinois Commerce Commission vs. United States,* 292 U. S. 475, as controlling where a statewide order is concerned.

There is no evidence or finding as to how much, if any, revenue is needed from intrastate traffic in order to provide a fair share of the carriers' total income. There is no evidence or finding as to what amount of revenue was required to enable the railroads to operate efficiently. The only finding is in Finding 5 that intrastate rates are not contributing their fair share of revenue to enable the railroads to operate efficiently and profitably, and in Finding 6, that the intrastate rates, increased to like extent as interstate rates, will increase the railroads' revenue and constitute not more than a fair proportion of the railroads' total income. There is no reference to any evidence supporting these findings. The findings are similar to those made by the Commission in *Alabama Intrastate Fares,* 258 I. C. C. 133. This type of finding was condemned on appeal by this Court in the North Carolina case, as being insufficient when unsupported by evidence.

Montana vs. United States, appendix.

The findings are apparently based on the reasoning that the interstate rates having been increased, in order to prevent violations of the Interstate Commerce Act, the Com-

mission must apply the same increases to intrastate rates. So far as the matters involved in this case are concerned this would mean that there could be no disparity between the rates. *Such a conclusion is directly contrary to law.*

See:

North Carolina vs. United States, supra.
Illinois Commerce Commission vs. Thompson, 318 U. S. 675.
Florida vs. United States, 282 U. S. 194.
Wisconsin Railroad Commission vs. Chicago, B. & Q. Ry. Co., supra.

Prior rate comparisons would, of course, be admissible in evidence, but they are not the criterion or basis on which the Commission may supplant state-made rates. The prior relationship may have been proper and reasonable. The requested rates may not be above the maximum reasonable rate. Neither of these conditions, under the provision of the act or under these controlling decisions, justify the Interstate Commerce Commission in supplanting state rates on these grounds. The present relationships may still be proper and the rates still be reasonable. The Commission's statement gives emphasis to our contention that the findings are based on the mere existence of disparity in rates, which is not a sufficient ground. The Commission must find that the present state rates violate the Interstate Commerce Act and those findings must be based on proper evidence, not mere generalities, nor on a showing that the relationship in rates is not the same now as it was four years ago. The fact that the Interstate Commerce Commission, on the evidence before it, saw fit to increase interstate rates is not evidence that

the present state rates violate any provision of the Act. *To so find would be to hold that the Commission has full authority over state rates and the states have no authority except to grant administrative approval.* Such a contention is contrary to the provisions of the Act.

THE COMMISSION HAS ERRONEOUSLY CONSIDERED ITS AUTHORITY RELATIVE TO INTERSTATE RATES AS ALSO APPLICABLE TO INTRASTATE RATE ADJUSTMENTS.

As this Court pointed out in the North Carolina case, supra, the Commission has broad powers over interstate commerce. We have previously stated the limitations applicable to the Commission authority over intrastate rates. In connection with interstate rates, the Commission determines whether they are reasonable. They do not have such authority over intrastate rates. Only when the intrastate rate causes either one or both of the conditions referred to in Section 13 may the Commission fix state rates. An intrastate rate higher than the maximum reasonable rate cannot be ordered, but the Commission's authority is not to fix reasonable state rates. It can only remove the preference, prejudice or discrimination adversely affecting interstate commerce.

The Commission has apparently assumed that having acted on interstate rates under Section 15a that they have the same authority as to intrastate rates. In other words, they are deciding Section 13 cases on the same basis as they do interstate cases. Congress has never granted such authority and this Court has said the Commission does not have such

authority. *An order supplanting state-made rates must be based on "clear findings supported by evidence of each element essential to the exercise of that power by the Commission."*

North Carolina vs. United States, supra.
Montana vs. United States, appendix.
Florida vs. United States, 282 U. S. 194.

POINT 3.

SYSTEM PASSENGER DEFICITS SHOULD NOT BE CONSIDERED IN CONNECTION WITH THE QUESTION OF INTRASTATE FREIGHT RATES UNDER SECTION 13 OF THE ACT.

The District Court in this case stated at 101 F. Supp. 944:

> "We conclude from this evidence that the increases in rates authorized by the Interstate Commerce Commission in Docket No. 30140, were authorized chiefly because of losses resulting from passenger operations.
> * * *
> "The question therefore, before the Court is—may the Interstate Commerce Commission increase freight rates generally to enable the carriers to meet deficits incurred from passenger operations?"

The opinion of the Court shows that the three principal railroads sustained a loss of $21,000,000.00 for 1948.

The appellant will undoubtedly discuss the law as to passenger deficits in detail. We will confine our remarks to general principles.

A proceeding claiming violation of Section 13 of the Act does not affect or challenge the authority of the Commission over interstate rates. Whether under the Transportation Act of 1940 or Section 15a of the Act, the Commission may consider passenger deficits in fixing interstate rates is immaterial to the problem before the Court.

There is no breakdown or allocation of intrastate passenger revenues or expenses to total Florida traffic, or Florida intrastate traffic. The Florida interstate shipper is paying the higher interstate rates because of passenger deficits. The intrastate shipper should not have to pay for deficits from passenger operations when those deficits arise from interstate traffic, or from traffic in other states. What was said by the Court in the Carolina case as to insufficiency of evidence is even more applicable when considering passenger deficits.

The Court in considering the law relative to passenger deficits, 101 F. Supp. 944, commented on the fact that the cases relied on by the appellants here were decided prior to the passage of the National Transportation Policy. We think the Court was in error in considering the Transportation Policy of 1940 as having any effect on intrastate rates or Section 13 (4) of the Act.

Sections 1, 13 and 15a (49 U. S. C. 1, 13, 15a) of the Act were re-enacted in 1940 at the same time and in the same act as the National Transportation Policy was declared. Section 1(2)(a) provides that the Act,

> "shall not apply (a) To the transportation of passengers or property or to the receiving, delivering, storage, or handling of property, wholly within one state and not shipped to or from a foreign country from or to any place in the United States as aforesaid."

Section 15a (2), (Appendix p. 26) amended in 1933, states:

> "In the exercise of its power to prescribe just and reasonable rates, the Commission shall * * *"

The Commission has no jurisdiction over the reasonableness of intrastate rates. The quoted sections do not indicate any jurisdiction or implied jurisdiction over intrastate rates. Sections 13 (3) and 13 (4) (Appendix pp. 25, 26) were added by the Transportation Act of 1920. Section 13 (4) grants authority to the Commission to increase intrastate rates (within the limits of the "zone of reasonableness"), for the purpose of removing specified interference with interstate commerce. This Court in the North Carolina case held that before state rates may be increased by the Commission, the existence of one or both of the limitations in Section 13 (4) must be found to exist by specific findings supported by adequate evidence.

See also: *Florida vs. United States,* 282 U. S. 194.

The National Transportation Policy enacted in 1940 (Note preceeding 49 U. S. C. 1) lays down some general rules to be followed by the Commission. It does not propose to grant any additional jurisdiction to the Commission. Had Congress intended to change the interpretation placed on Section 13 (4) by this Court in the Florida case, supra, it could have done so by specific amendment in several different manners. Congress did not do so. We think this Court correctly stated the boundaries of the Commission authority over state rates in the North Carolina case.

CONCLUSION

It is respectfully submitted that the Commission acting under Section 13 (4) of the Interstate Commerce Act can

increase state rates only when there are specific findings supported by substantial evidence establishing the existence of the conditions referred to in the Section. There is no evidence referred to in the Commission Report which would be sufficient to support a statewide order increasing rates, either because of preference and prejudice, or undue discrimination. Intrastate freight rates may not be increased because of deficits from passenger service, particularly where such deficits are on interstate or other state traffic. Neither the National Transportation Policy of 1940 or Section 15a extends the authority of the Commission under Section 13 (4) over intrastate rates, and in the absence of evidence and findings specifically showing violation of that Section, the Commission may not alter intrastate rates, regardless of what it may have found as to interstate rates under other sections of the Act. It is respectfully urged that the judgment of the lower court should be reversed and the Commission permanently enjoined from increasing intrastate rates involved in this proceeding.

Respectfully submitted,

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APPENDIX

PROVISIONS OF THE INTERSTATE COMMERCE ACT

Section 13. (As amended June 18, 1910, February 28, 1920, August 9, 1935, and September 18, 1940) (U. S. Code, title 49, sec. 13).

(1) * * * * *

(2) * * * * *

(3) Whenever in any investigation under the provisions of this part, or in any investigation instituted upon petition of the carrier, concerned, which petition is hereby authorized to be filed, there shall be brought in issue any rate, fare, charge, classification, regulation or practice, made or imposed by authority of any State, or initiated by the President during the period of Federal control, the Commission, before proceeding to hear and dispose of such issue, shall cause the State or States interested to be notified of the proceeding. The Commission may confer with the authorities of any State having regulatory jurisdiction over the class of persons and corporations subject to this part or part III with respect to the relationship between rate structures and practices of carriers subject to the jurisdiction of such State bodies and of the Commission; and to that end is authorized and empowered, under rules to be prescribed by it, and which may be modified from time to time, to hold joint hearings with any such State regulating bodies on any matters wherein the Commission is empowered to act and where the rate-

making authority of a State is or may be affected by the action taken by the Commission. The Commission is also authorized to avail itself of the cooperation, services, records, and facilities of such State authorities in the enforcement of any provision of this part or part III.

(4) *Whenever in any such investigation the Commission, after full hearing,* finds that any such rate, fare, charge, classification, regulation, or practice *causes any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce on the one hand and interstate or foreign commerce on the other hand, or any undue, unreasonable, or unjust discrimination against interstate or foreign commerce,* which is hereby forbidden and declared to be unlawful, it shall prescribe the rate, fare, or charge, or the maximum or minimum, or maximum and minimum, thereafter to be charged, and the classification, regulation, or practice thereafter to be observed, in such manner as, in its judgment, will remove such advantage, preference, prejudice or discrimination. Such rates, fares, charges, classifications, regulations, and practices shall be observed while in effect by the carriers parties to such proceeding affected thereby, the law of any State or the decision or order of any State authority to the contrary notwithstanding. (Emphasis supplied).

Section 15a. (Added February 28, 1920; amended, June 16, 1933, and September 18, 1940.) (U. S. Code, title 49, sec. 15a.)

(1) * * * * *

(2) *In the exercise of its power to prescribe just and reasonable rates the Commission shall give due consideration,* among other factors, to the effect of rates on the movement of traffic by the carrier or carriers for which the rates are prescribed; to the need, in the public interest, of adequate and efficient railway transportation service at the lowest cost consistent with the furnishing of such service; and to the need of revenues sufficient to enable the carriers, under honest, economical, and efficient management to provide such service. (Emphasis supplied).

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

STATE OF MONTANA, BOARD OF RAILROAD COMMISSIONERS OF THE STATE OF MONTANA AND PAUL T. SMITH, LEONARD C. YOUNG AND AUSTIN B. MIDDLETON, as members of and constituting the Board of Railroad Commissioners of the State of Montana,

Plaintiffs,

and

AMERICAN CRYSTAL SUGAR COMPANY, THE GREAT WESTERN SUGAR COMPANY AND HOLLY SUGAR CORPORATION, THE MONTANA STOCKGROWERS ASSOCIATION, a corporation, AND THE MONTANA WOOLGROWERS ASSOCIATION, a voluntary association,

Intervening Plaintiffs,

vs.

UNITED STATES OF AMERICA,

Defendant,

and

INTERSTATE COMMERCE COMMISSION, NORTHERN PACIFIC RAILWAY COMPANY, GREAT NORTHERN RAILWAY COMPANY, CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY, UNION PACIFIC RAILROAD COMPANY and CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY,

Intervening Defendants.

NO. 586

Before POPE, Circuit Judge, and PRAY, Chief Judge, and MURRAY, District Judges.

PER CURIAM.

This is a proceeding under the provisions of Title 28, U. S. C., Sections 2321-2325, brought on the petition of the State of Montana and the Board of Railroad Commissioners thereof against the United States of America, seeking an injunction restraining the enforcement and operation of an order of the Interstate Commerce Commission authorizing the railroads mentioned in the order to establish and place in effect intrastate rates in Montana which will reflect in general an 8 per cent increase over those approved and permitted by the Board of Railroad Commissioners of the State of Montana for such intrastate traffic.

The proceedings before the Interstate Commerce Commission, here referred to as the Commission, which preceded those in which the order now under attack was made, the railroads operating in the State of Montana with other similar carriers were granted permission to establish a series of general increases in interstate rates. These were granted by the Commission in order to meet increased costs of materials, supplies, wages and other items entering into operating costs, which in general resulted from postwar inflationary trends. In Ex Parte 162, 266 I. C. C. 537, decided December 5, 1946, an increase of 20 per cent in interstate rates in western territory, which includes Montana, was granted, subject to qualifications not here material. In Ex Parte 166, 270 I. C. C. 81, decided December 27, 1947, the Commission granted a further interstate increase of 20 per cent. Following each of these increases, the railroads oper-

ating in Montana made application to the Board of Railroad Commissioners of the State of Montana, herein referred to as the Board, for like increases intrastate. Following the Ex Parte 162 order of the Commission, the Board granted like increases intrastate with minor exceptions. Similarly following the Commission's order in Ex Parte 166, the Board granted a corresponding increase as to intrastate commerce, except that as to sugar beets and livestock it limited the authorized increase to one of 10 per cent.

Thereafter on August 2, 1949, in a proceeding known as Ex Parte 168, the Commission granted a further increase in rates in interstate traffic in western territory of 8 per cent. These rates became effective September 1, 1949. Upon application to the Board for corresponding increases on intrastate traffic the Board refused to permit the increases. This refusal was followed by proceedings before the Commission instituted September 22, 1950, seeking an order from the Commission under Section 13 (4) of the Transportation Act of 1940 that intrastate rates in Montana be increased by the percentage authorized as to interstate rates, by the Commission in the earlier proceedings mentioned. The order there sought was granted and that is the order here in question.

The opinion and findings of the Commission, upon which its order is based, listed numerous instances of what the Commission found to be unjust discriminations between persons or localities in intrastate commerce on the one hand, and interstate or foreign commerce on the other hand. These

instances thus listed by the Commission in the opinion which accompanies its findings, although considerable in number and although sufficient to warrant appropriate orders by the Commission increasing the particular intrastate rates which produced the unfair discrepancy, as the Commission is empowered to do under the Doctrine of the Shreveport Case, 234 U. S. 342, do not in our opinion support or warrant the order here in question, which "includes (rates) between all interior points although neither may be near the border and the (rates) between them may not work a discrimination against interstate (commerce) at all." Wisconsin R. R. Comm. v. C. B. & Q. R. R. Co., 257 U. S. 563. There is evidence in the Commission's report that it recognized this limitation, for it expressly recited that its power to require the broad increase here ordered must be predicated upon other grounds, saying:

> "Our power to require an increase in intrastate rates and charges depends upon whether intrastate traffic is contributing its fair share of the earnings required to meet maintenance and operating costs and to yield a fair return on the value of the property devoted to the transportation service, both interstate and intrastate."

The State and the Board, while not questioning the power of the Commission to make an order requiring a state wide increase of intrastate rates in the circumstances stated in the quotation just made, say that the order here before us is invalid because the findings upon which it is based do not measure up to the "high standard of certainty" required in respect to such orders. North Carolina v. United States,

325 U. S. 507, 511. It is contended that there was no evidence to show that the intrastate rates must be increased 8 per cent or any other percent before such traffic would contribute "its fair share of the revenue required to enable respondents to render adequate and efficient transportation service." The State also urges that the findings lack a determination in this respect and says that before the Commission may make the necessary fundamental finding as to whether a fair share is being contributed, it must make inquiry into the costs of the intrastate commerce within Montana in relation to the state revenue and the costs and revenue from the entire system of each railroad. The Commission found that the segregation of such costs of handling intrastate traffic was impossible; that they could not be determined or segregated from the total cost incurred in handling all traffic.[1] The Commission arrived at its conclusion that the same 8 per cent increase must be added to the intrastate rates in order to bring them to the point where they would produce their fair share of the required revenue, by stating:

> "Increased costs are, however, as applicable in Montana as in any other place, *and on the assumption that the relationship of the Montana intrastate rates to the interstate rates prior to the general rate increase pro-*

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[1] The report which accompanies the findings recited:

"As to whether the present intrastate rates in Montana are insufficient to cover the service performed respondents have been unable to determine the cost of handling intrastate traffic. It is virtually impossible to separate the costs in the various States from the total cost incurred in handling all traffic."

> *ceedings was proper,* the former should be increased to the same extent as the latter to maintain that relationship." (Emphasis added)

The State and the Board assert that the Commission may not properly make any such assumption. They say that this assumed proper relationship of intrastate and interstate rates prior to any of these increases is a matter of proof and of finding. The contention is that for aught that appears here, the intrastate rates which antedated any of these increases may have been disproportionately high, and that the effect of the last interstate increase may have operated to do no more than bring the two sets of rates into a just proportion.

A like question arose under very similar circumstances in the case of State of Montana v. United States, (1933) 2 Fed. Supp. 448, in which a three-Judge court, sitting in this district, was asked to enjoin an order increasing intrastate freight rates under circumstances very similar to those presented here. The opinion in that case expressly approved an assumption identical with that here drawn in question, and sustained the order there under attack. The Court said:

> "By reason of the presumption of regularity in official duty theretofore performed, it is to be assumed, even as it is unquestioned, that at the time of interstate increase ordered interstate rates and intrastate rates were in just relationship, a harmonious whole, each contributing its fair proportion of total revenues in discharge of their common obligation to adequately maintain the railroads and service in common used by interstate and intrastate commerce."

In respect to the particular argument here discussed, if the law now applicable be the same as that at the time of the decision of the case just cited, we would be constrained to follow that decision and to consider it dispositive of the point mentioned for the reason that the judgment in that cases was affirmed by the Supreme Court, per curiam, in Montana v. United States, 290 U. S. 593. Other decisions rendered about the same time would seem to indicate that in the situation in which the Commission here found itself it was unnecessary to segregate and separate intrastate and interstate costs and revenues where it appears that the conditions under which interstate and intrastate traffic moved are substantially the same with respect to all factors bearing on the reasonableness of the rate and the two classes are shown to be intimately bound together. Illinois Commerce Comm'n v. U. S., 292 U. S. 474, 483. Here the Commission has made findings, which we must accept, that the intrastate traffic and the interstate traffic are handled within Montana in the same trains, by the same crews and with the same facilities and that in the physical handling both are inextricably commingled. It found that both types of traffic moved under substantially similar conditions and the expense of handling the two classes is inextricably woven together. It found that an attempt to do the impossible, namely to show costs of intrastate service segregated from interstate costs, would serve no useful purpose.

These findings would appear to require a conclusion such as that arrived at in Illinois Commerce Comm'n v. U. S.,

supra, and in the three-Judge court decision from which quotation has been made, unless it can be said, as the plaintiffs here contend, that a different rule and a higher standard for findings upon this point is called for by what was said by the Supreme Court in North Carolina v. United States, supra.

In its discussion of the rules applicable to cases of this character, the Supreme Court in that case pointed out, clearly and emphatically, that since in a case of this character the Commission was moving into the field of intrastate transportation, which is primarily the concern of the State:

> "A scrupulous regard for maintaining the power of the state in this field has caused this Court to require that Interstate Commerce Commission orders giving precedence to federal rates must meet 'a high standard of certainty'. Illinois Central R. Co. v. Public Utilities Commission, 245 U. S. 493, 510. Before the Commission can nullify a state rate, justification for the 'exercise of the federal power must clearly appear'. * * * * The foregoing cases also stand for the principle that the Interstate Commerce Commission is without authority to supplant a state-prescribed intrastate rate unless there are clear findings, supported by evidence, of each element essential to the exercise of that power by the Commission."

What was said in that case, coupled with the argument here, that the findings of the Commission now before us are as deficient as those which brought condemnation of the order in the North Carolina case has caused us much concern. The State argues that all we have here in addition to what appeared in the findings in the North Carolina

case is an assumption which has no relation to any facts in evidence. The State says that the Commission's findings disclose on their face that the prior relationship of the two classes of rates is merely assumed and not proven to have been right and proper.

We are constrained to hold that the North Carolina case did not undertake to change the law as it theretofore existed or to increase the requirements as to the Commission's findings. In the first place the language of the Court bears no evidence of an intent to establish a new rule. Furthermore, so far as this particular point is concerned, there were facts in that case which differ from the facts which were before the three-Judge court in State of Montana v. United States, previously cited. In the North Carolina case, it was pointed out that there was reasonable doubt as to whether the Commission had ever fixed as the only reasonable interstate rate the rate which was sought to be established intrastate. The Court dwelt at length upon the manner in which the Commission had authorized a charge of 2.2 cents per mile, but without a hearing or evidence or finding that the railroads needed this increase. These circumstances alone were sufficient to disclose the absence of a basis for the order relating to an intrastate carriage. Furthermore, the Court pointed out that at the time of the order under attack former deficits of the North Carolina railroads had been transformed by very large revenue increases into very substantial profits. The Court said that this showed that had the Commission made any findings on the subject at all, it might properly

have found that a much lower rate would have produced a fair intrastate contribution to revenues.

We think that it is obvious that in the circumstances of this case, where segregation of intrastate costs is found to be impossible, there would be no way in which the Commission could exercise its statutory power to make an order which will require intrastate rates to contribute their fair share toward the revenue required to maintain an efficient railroad system, if the method and procedure adopted by the Commission in this case is not permissible. We do not think that anything said in the North Carolina case could have been intended to have the effect of requiring an impossibility.

We are also impressed with the argument made on behalf of the Commission that the "just relationship" of interstate and intrastate rates mentioned in the opinion of Judge Bourquin in the three-Judge case previously cited may not only be supported by the presumption there mentioned, but that an inference to like effect may be drawn from the fact that for a considerable number of years intrastate rates subject to continuous regulation by the Board and interstate rates subject to continuous regulation by the Commission shook down and fell into a relationship each to the other, which was the result of both action and non-action by shippers, Board and Commission.

It may be argued that if this assumption is to be made in all such cases, then there is no purpose in the Act's re-

quirement of a hearing. If an increase in interstate rates percentagewise is always to be followed by a similar increase in intrastate rates, what remains to be heard? We think that the answer is that the presumption mentioned by Judge Bourquin and the inference from lapse of time to which we have referred is sufficient in the circumstances of practical impossibility to produce evidence of local costs sufficient to make a prima facie showing in respect to which the Board and the objecting shippers had an opportunity to offer evidence to the contrary,—if, for example, they were able to disclose that the prior intrastate rates were already disproportionately high. We think that in this connection we should say what the Supreme Court said in the somewhat different case of United States v. Louisiana, 290 U. S. 70, at page 79:

> "The case of the Louisiana rates was not alone before the Commission, and it should not be treated as though it were. A number of other states, contesting in the aggregate a wide range of rates, were heard at the same time. Had the Commission been required to go into the circumstances of each item with particularity the purpose of its original order would have been defeated. *It sufficed that the Commission found that Louisiana showed nothing in the circumstances of its agriculture and industry or its traffic conditions so different from the rest of the country as to lead to the conclusion that the intrastate rates, raised to the reasonable general interstate level, would not themselves be reasonable;* and that it saved the rights of interested parties to test the reasonableness of any individual rate." (Emphasis added)

Here we think it sufficed that the Commission's report and findings disclose that Montana showed nothing in the circumstances relating to its prior intrastate rates so different from interstate rates as to lead to the conclusion that raising intrastate rates in the same proportion as that applied to the interstate increase would be unreasonable or would not operate to bring about the result of securing a fair share of the required revenue from the local rates. We see no reason therefore for a departure from the views expressed in the three-Judge court case previously cited.

Our examination of the record in other respects has led us to grave doubt as to the sufficiency of the findings in another particular. As was said in the North Carolina case, supra, the mere existence of a disparity between particular rates on intrastate and interstate traffic does not warrant the Commission in prescribing intrastate rates (325 U. S. at page 516), and the standard for the Commission's determination in a case of this kind is not whether the intrastate traffic is contributing its fair share of the railroads' total revenue—the question is whether it is contributing its fair share "of the revenue required to enable respondents to render adequate and efficient transportation service".

In the North Carolina case, one of the defects in the Commission's findings was that "it made no finding as to what amount of revenue was required to enable these railroads to operate efficiently". We have examined the voluminous record before us with all the care and diligence which the time allowed has permitted us to exercise and we must say

that it now appears to us that the same deficiency exists in the findings attached to the order here under review. Undoubtedly the Commission properly took official notice in this hearing of its findings and order in Ex Parte 168, which immediately preceded the proceedings here under review. Davis on Administrative Law, 1951, Sec. 155, page 508. We have examined the order, findings and report in that matter in 276 I. C. C. 9. It is there found, or it may be inferred therefrom, that an increase in interstate rates of 8 per cent is required to produce sums sufficient to permit railroads within the western territory, which includes Montana, to procure the required amount of revenue. The statement is "the anticipated revenue from the increases in rates and charges herein authorized and found to be just and reasonable is necessary to aid petitioners in meeting these outlays". There follows the order for the 8 per cent increase in interstate rates. The record of those proceedings appears to us to be devoid of any statement or finding to the effect that the 8 per cent will be sufficient on the assumption that a like increase be procured thereafter in respect to intrastate rates. We find no statement of the total amount required for the maintenance of the necessary adequate services and the payment of a reasonable rate on the investment anywhere in that record, nor can we discover figures from which we might calculate for ourselves and determine whether the Commission intended to find that there was required an 8 per cent increase on interstate rates in addition to a contemplated or any increase on intrastate rates. If the Commission intended

any such conclusion, it most successfully refrained from disclosing it in writing. The Commission is not without experience in these matters and presumably had in mind that in its order referred to in Illinois Commerce Comm'n v. U. S., supra, at page 478, it had expressed its contemplation that the state commissions would bring intrastate rates into harmony with the interstate rates it prescribed. There one would find reason for an inference that the interstate rates prescribed were fixed at the rates allowed in contemplation of the procuring of like increases intrastate. We find no such help in the record here mentioned. Here the Commission has made no finding that when the interstate increases are collected the railroads will still be short of the required revenues whatever those may be. If, as these proceedings suggest, the interstate increase will take care of the unstated required amount, then an appropriate adjustment of the whole matter would appear to be not that required by this order, but rather a lowering of the interstate rates there fixed accompanied by an appropriate increase of the intrastate rates which then would result in an over-all across the board increase of something less than 8 per cent.

Nor does the order, findings and report now under review supply the missing facts or findings. Under the heading of "Respondents' property, investment and revenues", the report gives numerous figures as to the property investment of the Class I railroads serving Montana, ranging from 1929 to 1949. Also given are the rates of return for the same

periods showing a rate for 1949 substantially less than that predicted for the western territory railroads in Ex Parte 168 for that year, but this is followed by a statement that in the first quarter of 1949 these carriers had an operating deficit in excess of $5,000,000 as a result of unusually severe weather conditions in the areas served by them. It appears that in 1950, with the opening of Korean hostilities, operating revenues considerably increased. This portion of the report gives the deficit for 1949 in passenger operations, but gives us no assistance as to how this figure may be incorporated into a calculation which the Commission neglected to make for itself. The report states that as a result of questionnaires received from the carriers, it can conclude that due to the failure of the Montana Commission to grant the increases requested there has been a "total revenue loss" approximating $700,000 a year. The context shows that the loss here referred to is not an actual loss, but only a loss in the sense that it represents amounts which the carriers might have collected in addition to their actual collections had the requested intrastate increases been permitted. The Commission report, commenting on the arguments of the respondents in the proceeding before the Commission said:

> "They also take the position that rates and charges increased as sought will produce revenue necessary to enable them to maintain in the public interest adequate and efficient railroad transportation service at the lowest cost consistent with the furnishing of such service, as declared by Congress in the national transportation policy and in section 15a (2) of the act."

This does no more than to show that the respondents appreciated the questions involved in the proceeding, but it is not a finding by the Commission. The utmost extent to which the report and findings appear to go is in the statement:

> "The findings in Ex Parte Nos. 162, 166 and 168 authorizing increase in interstate rates and charges indicate that like increases ought to be made in intrastate rates and charges including those within Montana."

We are well informed by the Commission's order itself that it thinks these increases "ought to be made". But as stated in the North Carolina case, they cannot be made unless the Commission by appropriate findings based on evidence states *why* they ought to be made.

Before concluding we wish to add to the comments previously made with respect to the apparent insufficiency of the findings that we have noted that in its formal finding No. 4, the Commission stated that the Montana intrastate rates and charges "are not contributing their fair share to the revenues required by respondents to enable them to render adequate and efficient service and to operate profitably." This is precisely the conclusion reached by the Commission in the North Carolina case and is in large part in precisely the same language quoted by the Supreme Court at page 514 of 325 U. S., but this general conclusion of the Commission leaves us in the same predicament in which the Supreme Court found itself in that case. As the Supreme Court there said:

"This conclusion of the Commission, if based on findings supported by evidence, would justify its order."

The difficulty there was the same as our difficulty here, which is that so far we have been unable to discover such findings.[2]

If we had had adequate time to read more thoroughly the record before us so that we might say with perfect assurance that the essential findings here indicated to be lacking are not concealed in some obscure portion of the report, we would proceed to issue an injunction against the enforcement of the order. However, the point last discussed by us was not argued at the hearing and we think that fairness requires that the parties be heard upon this question. Accordingly, IT IS ORDERED that the submission of the cause heretofore made on July 21, 1952, be vacated and the cause be and the same hereby is set for further argument before this court

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[2] Another point seriously urged by the plaintiffs during the argument was that the interstate rates were not declared by the Commission to be the only reasonable rates, that they were merely maximum rates found reasonable; while the rates ordered as the intrastate rates within Montana were determined by the Commission to be minimum reasonable rates which the Board would be without power to decrease. It was pointed out that the carriers could at any time publish rates below the interstate maximums. It is said that if and when the carriers do adjust interstate rates accordingly, there will be no appropriate or proper relationship between the interstate rates actually charged, and the minimum intrastate rates here fixed by the Commission.

As of now it occurs to us that this objection may be answered by the phraseology of the Commission's finding No. 7, but this we think may properly be the subject of further argument at the hearing hereafter fixed.

at the court room at Helena, Montana, at the hour of 10:00 o'clock A. M. on Monday, August 11, 1952.

And for the reasons herein stated, which are hereby adopted as the findings of the Court in connection with the order hereinafter stated and made, the Court finds that for good cause shown the aforesaid order of the Interstate Commerce Commission should be stayed and its operation and enforcement restrained in its entirety, pending the final hearing and determination of this action as herein ordered, and it appearing to the Court that it is necessary that the operation of said order be stayed and suspended and that a temporary injunction issue to that effect, in order to avoid irreparable damage which will result if the order is not granted, in that a multitude of claims for refunds would result should said stay not be granted and the Court finally adjudge the order invalid, IT IS ORDERED that the operation of said Interstate Commerce Commission order be and the same is hereby stayed and suspended, and the defendants, their agents and all persons acting under them or pursuant to their authority be and they are restrained and enjoined from enforcing said order until the final hearing and determination of this action.

Dated this 24th day of July, 1952.

WALTER L. POPE
Circuit Judge

CHARLES N. PRAY
W. D. MURRAY
District Judges

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

STATE OF MONTANA, BOARD OF RAILROAD COMMISSIONERS OF THE STATE OF MONTANA AND PAUL T. SMITH, LEONARD C. YOUNG AND AUSTIN B. MIDDLETON, as members of and constituting the Board of Railroad Commissioners of the State of Montana,

Plaintiffs,

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Intervening Defendants.

NO. 586

Before POPE, Circuit Judge, and PRAY, Chief Judge, and MURRAY, District Judges.

Upon further hearing held pursuant to the Court's order of July 24, 1952.

PER CURIAM.

In an opinion filed July 24, 1952, we stated the issues involved in this proceeding and our conclusions upon some of them. We called attention to the fact that the court was unable to discover that the Interstate Commerce Commission, here called the Commission, had made in connection with its order here under review, or in its proceeding designated as Ex Parte 168, which preceded the Commission's order relating to Montana intrastate rates, a finding which we felt was an essential prerequisite to the validity of such order. The apparent omission there referred to was the failure of the Commission to find the amount of revenue required from Montana intrastate traffic to enable the railroads operating in or through Montana to do so efficiently. Our reasons for considering such a finding essential and our inability to discover such finding were fully set forth in the former opinion and what was there said need not be repeated here.

Upon the further hearing then ordered counsel for the respective parties have been given an opportunity to discuss at length the questions which had troubled the court. Extensive briefs carefully prepared and able arguments on both sides have been of material assistance to the court and

we now proceed, starting where we left off in the former opinion, to discuss our views with respect to the matters which were reserved for further argument.

Counsel for the defendant, the Commission, and the intervening Railroads, have undertaken to make several answers to our inquiry as to where the missing finding could be found. Counsel for the Commission conceded that they are unable to point to any explicit statement in the report in Ex Parte 168 reciting in effect that the additional revenues necessary to permit the railroads to operate efficiently was such that there would be required not merely the 8 per cent increase in interstate rates there ordered but also a like increase in intrastate rates.[1]

The first contention made is that the intention of the Commission to make such a statement or to include a determination that its interstate increase was fixed at the amount of 8 per cent upon the assumption that a like increase would be obtained on intrastate rates may be gathered from certain press notices and from the Commission's annual report to Congress issued subsequent to the Ex Parte 168 order. On the day following the issuance of the interim increase order

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[1] The Commission says: "While we also are unable to point to any explicit statement to that effect in the report in Ex Parte 168, we would point out that there is also no language therein which would indicate that the Commission's findings were based upon a contrary assumption; that is, there is no finding or other statement to the effect that the requirements of the railroads would be met by the interstate increase only. We think that the Commission merely failed to state the obvious."

in Ex Parte 168, the Commission issued a notice to the public or press notice in which it said of the order and of the rate increase approved: "This estimate is based upon the assumption that corresponding increases will be made effective on intrastate traffic." A similar press notice was issued following a final order in that matter containing the statement: "These estimates assume corresponding increases in intrastate traffic." The final order in Ex Parte 168 was dated August 2, 1949. In its sixty-third annual report to Congress dated November 1 following, the Commission, with respect to the rate increases authorized in Ex Parte 168, said: "Based on the anticipated volume of traffic in 1949, our staff on December 29, 1948, estimated that the interim increases would yield a total of $425 millions additional revenue per annum to the class I railroads, provided corresponding increases are made effective simultaneously in intrastate traffic."

We think it is obvious that a finding wanting in the former report cannot be supplied from any such sources as those thus suggested. Aside from the wholly impracticable suggestion that interested parties might be required to wait from August 2, the date of the order, to November 1, the date of the annual report, to discover the essential finding, it is sufficient to say that under the provisions of Section 8b of the Administrative Procedure Act, (5 USC Sec. 1007b), all decisions of the Commission must "include a statement of (1) findings and conclusions, as well as the reasons or basis therefor, upon all the material issues of fact, law, or

discretion present on the record." We think it clear that the absent finding cannot be supplied by these press notices or the Commission's annual report.

Next it is argued that what we found missing both in the order here reviewed and in Ex Parte 168 is to be found in the Commission's findings in the earlier cases including Ex Parte 162 and 166. It is said that both the initial and the final report in Ex Parte 168 discloses that that proceeding was but a later phase of the readjustment of charges of the railroads incident to postwar economic changes. It is said therefore that the order in Ex Parte 168 must be read as though it had incorporated by reference certain findings and statements of the Commission in earlier orders which were explicit upon the point in respect to which the Ex Parte 168 order was silent.

The initial report in Ex Parte 168, (272 ICC, at page 698) stated: "This proceeding is a phase of the readjustment of the charges of rail carriers inevitably incident to the late World War and its economic aftermath. Accordingly, this report is to be read with our latest report (title 'on further consideration') in Ex Parte No. 166, *Increased Freight Rates, 1947*, 270 I. C. C., 403, and with preceding reports in that proceeding, and also with the reports in the earlier proceeding of a similar character, Ex Parte No. 162, *Increased Railway Rates, Fares and Charges, 1946*, the latest being found at 266 I. C. C. 537, and also reports in other proceedings involving the whole or major portions of the railroad rate

level, referred to in the two reports cited. The present proceeding may be considered in effect, if not in form, a part of the series . . ."

In the final report in Ex Parte 166, the Commission undertook to determine the reasonableness of the proposed increased rates for a constructive normal year and to estimate the traffic expected to move thereunder. In considering the revenue effects of rate increases authorized, the Commission said that the table of such increases "assumes increases to have been approved on intrastate traffic similarly to those upon interstate traffic in the same territory, for the whole time." The Commission also said in its report in Ex Parte 166: "This estimate is upon the assumption that timely similar adjustments will be made upon intrastate traffic."[2]

It is argued that an intention to include similar findings or statements in Ex Parte 168 is made manifest by the recital in the report in Ex Parte 168, that "We invited the cooperation of the State regulatory bodies as obviously State made rates would be involved." (272 I. C. C. at page 700.)

With respect to this argument that in effect the missing finding or statement was incorporated in Ex Parte 168 by

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[2] The report also recited that its computations "presuppose that generally similar increases will be permitted by State authorities on intrastate traffic, or may become effective otherwise." It also said: "Considering the entire record upon this feature of the proceeding we conclude that the orders heretofore entered, especially when action by the State authorities is finally completed upon the carriers' proposals, meet the emergency needs of the petitioning carriers, as shown by the record. . ."

the latter's reference to Ex Parte 166, we note that there is missing from the report in case No. 168 any general statement that everything said in Ex Parte 166 is now repeated in or intended to be a part of Ex Parte 168. Obviously the additional revenues called for by Ex Parte 168 are different in amount than those set forth in Ex Parte 166. The percentage of increase allowed is different. On the other hand, there were no doubt numerous reasons why the Commission in the opening sentence of its initial report in Ex Parte 168 should call attention to its earlier reports and should suggest that the later one be read with those which preceded it. There were numerous respects in which the later proceeding could be said to deal with problems mentioned in the earlier ones.

It seems to us that we would have to put a very strained construction upon these references in the initial report in Ex Parte 168 in order to arrive at a conclusion that they operated to bring about a statement in Ex Parte 168 of that which is clearly missing therefrom. Such a construction would be a strained one wholly apart from the inferences to be drawn from the fact that the Commission apparently deliberately made the finding or statement in one case and omitted to make the same finding in another case.

Our views as to the construction of the phraseology in the initial report in Ex Parte 168, which has here been urged upon us, cannot be better expressed than in the language of Mr. Justice Cardozo in U. S. v. Chicago, M. St. P. & P.

R. Co., 294 U. S. 499, 510, as follows: "We would not be understood as saying that there do not lurk in this report phrases or sentences suggestive of a different meaning. One gains at places the impression that the Commission looked upon the proposed reduction as something more than a disruptive tendency; that it found unfairness in the old relation or parity between Brazil and Springfield; and that the new schedule in its judgment would confirm Milwaukee in the enjoyment of an undue proportion of the traffic. The difficulty is that it has not said so with the simplicity and clearness through which a halting impression ripens into reasonable certitude. In the end we are left to spell out, to argue, to choose between conflicting inferences. Something more precise is requisite in the quasi-jurisdictional findings of an administrative agency."

The third argument made on behalf of the intervening Railroad defendants throws even further doubt upon the sufficiency of the Commission's findings. That argument in substance is that the finding which our former opinion declared missing was wholly unnecessary. It was contended that since the Commission in Ex Parte 168 and in the proceeding here under review found that the Railroads here affected required additional revenues at the time the application in Ex Parte 168 was presented, and since it found that the Montana intrastate rates are now on a lower level than the interstate rates now found reasonable, the fact that both kinds of traffic moved under the same conditions, with costs inextricably commingled, requires a conclusion that the

intrastate rates may be properly ordered brought in line with the interstate rates. Counsel who made this contention on behalf of the Railroads summarized his argument as follows: "I think it is clear from what I have said earlier that in view of the woefully inadequate revenues of the Montana lines, the low level of Montana intrastate rates, the fact that operating conditions are the same, that a contribution of no greater percent from Montana intrastate traffic than is currently being received from interstate traffic is not in excess of the amount needed by these lines to enable them to operate adequately and efficiently."

We find ourselves unable to go along with this argument. It appears to us to be an attempt to contend that the mere existence of a disparity between intrastate and interstate rates is sufficient to warrant the Commission to prescribe intrastate rates. We think it sufficiently settled that "the mere existence of a disparity between particular rates on intrastate and interstate traffic does not warrant the Commission in prescribing intrastate rates." Florida v. United States, 282 U. S. 194, 211-212; North Carolina v. United States, 325 U. S. 507, 516. We think that counsel is attempting to sustain the order by what the Supreme Court called in the North Carolina case "a very simplified form of proof."

Here there is no finding as in Florida v. United States, 292 U. S. 1, 9, that the intrastate rate scale "was abnormally low and less than reasonably compensatory . . . . 'insufficient under all the circumstances and conditions to cover

the full cost of the service'." There is nothing in the record before us to disclose a finding that the increased interstate rates and the existing intrastate rates are not both within a "zone of reasonableness."[3]

But the very fact that this argument thus rejected by us has been made here, suggests the possibility that the Commission accepted and acted upon a similar view. When that is considered there is brought to mind a special and peculiar reason why "a high standard of certainty" must be required of findings in a case of this character. For, as stated by Mr. Justice Cardozo in U. S. v. Chicago, M. St. P. & P. R. Co., supra, at page 511, "We must know what a decision means before the duty becomes ours to say whether it is right or wrong." And as stated by Mr. Justice Douglas in U. S. v. Carolina Carriers Corp., 315 U. S. 475, 489, "An insistence upon the findings which Congress has made basic and essential to the Commission's action is no intrusion into the administrative domain."[4]

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[3] The term is from U. S. v. Chicago, M., St. P. & P. R. Co., supra, at p. 506.

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[4] The court there said (p. 489): "Congress has also provided for judicial review as an additional assurance that its policies be executed. That review certainly entails an inquiry as to whether the Commission has employed those statutory standards. If that inquiry is halted at the threshold by reason of the fact that it is impossible to say whether or not those standards have been applied, then that review has indeed become a perfunctory process. If, as seems likely here, an erroneous statutory construction lies hidden in vague findings, then statutory rights will be whittled away. An insistence upon the findings which Congress has made basic and essential to the Commission's action is no intrusion into the administrative domain. It is no more and no less than an insistence upon the observance of those standards which Congress has made 'prerequisite to the operation of its statutory command.'"

We remain of the opinion, previously expressed, that the essential finding mentioned is lacking in the Commission's report and order.

Finally, the defendants ask us to hold contrary to what was said in the former opinion that the order of the Commission must be sustained on the evidence and findings with respect to preference and prejudice as between persons and localities. In presenting this argument defendants rely upon Georgia Public Service Comm. v. United States, 283 U. S. 765, 774, in which the Supreme Court said, with respect to a similar proceeding: "When an investigation involves shipments from and to many places under varying conditions, typical instances justify general findings".[5]

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[5] The text quoted by defendants is as follows: "The appellants contend that the findings are unsupported by the evidence. When an investigation involves shipments from and to many places under varying conditions, typical instances justify general findings. RAILROAD COMMISSION V. CHICAGO, B. & Q. R. CO., 257 U. S. 563, 579. Compare BEAUMONT, S. L. & W. RY. CO. V. UNITED STATES, 282 U. S. 74, 83. While the order relates only to a few commodities, the scales of rates are statewide in operation; and they apply to shipments between hundreds of points of origin and destination. To require specific evidence and separate adjudication in respect to each would be tantamount to denying the possibility of granting relief. Compare NEW ENGLAND DIVISIONS CASE, 261 U. S. 184; RAILROAD COMMISSION V. CHICAGO, B. & Q. R. CO., loc. cit. supra. The evidence was comprehensive in scope. It occupies 556 pages of the printed record; and there were besides 337 exhibits. The proof of the discrimination against interstate commerce was specific and typical, and was clearly sufficient to establish the undue prejudice to interstate shippers. Compare NASHVILLE, C. & ST. L. RY. CO. V. TENNESSEE, 262 U. S. 318; UNITED STATES V. ILLINOIS CENT. R. CO., 263 U. S. 515."

It is contended that the Commission's findings of specific instances of preference and prejudice worked against interstate transportation and in favor of comparable intrastate hauls are sufficiently numerous and sufficiently typical to warrant the general, state-wide rate order here involved.

So far as the Georgia Comm. case, supra, is concerned, we think that it does not constitute authority for such a position here. The order in the Georgia Comm. case had to do with rates on but four related products, namely, chert, clay, sand and gravel. The indication by the Supreme Court that typical instances of preference and prejudice, with respect to these few products, would justify a general order with respect to such products does not suggest to us that we would be warranted in holding that the few instances of preference and prejudice listed in the present report and order, relating in the main to petroleum products, sugar beets, livestock, cement, coal and ore and concentrates could be so typical of the shipments of manifold unrelated products as to constitute a basis for the order here in question. We can understand how the instances of preference and prejudice, in respect to shipments of petroleum products which are listed in the report, might well be so typical of all intrastate shipments of petroleum products that a general order increasing the rates on petroleum products might be sustained. That was the Georgia Comm. case. But we cannot perceive how findings of instances of preference and prejudice in the case of shipments of coal, petroleum products, cement and other items listed in the report could justify a

general order relating to shipments of books, paper, household goods, harnesses, farm machinery, paints, lumber and a mass of other items not mentioned in the Commission's report.[6]

To support their argument that the instances of preference and prejudice here involved were not only typical but numerous and of major importance, counsel have asked us to examine Exhibit 3, which was introduced in evidence before the Commission. This Exhibit, it is said, enumerates item by item numerous products in respect to which definite losses are asserted to have resulted from the failure to obtain the intrastate increases demanded. We have been supplied with what purports to be a copy of that exhibit, showing the amounts of claimed losses set opposite each of these items, the total aggregating $535,550.55, which would be a major portion of the $700,000.00 which the Commission found

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[6] In the argument considerable emphasis was placed upon the disparity between interstate and intrastate rates on sugar beets. Some Montana beet factories shipped a portion of their beets from other states, while others receive only intrastate shipments. In the case of each sugar mill, the farmer producers receive identical prices, whether the producer be within or without the State. It would appear that the main preference and prejudice, if any, operates against the sugar mill rather than the producer. But the owners of the sugar mills have all intervened here in support of the State. It is urged that the portion of Section 13(4), which authorizes the Commission to eliminate preference and prejudice as between persons and localities, is one enacted for the benefit of shippers and not the carriers, and that so far as the sugar beet industry is concerned the carriers are not in a position here to claim any advantage from the existence of any disparity in rates as to sugar beets. We find it unnecessary to express an opinion upon this point.

might have been procured by the Montana intrastate increases. It is sufficient to say that to arrive at any such figures we would be obliged to delve into the record and go behind the Commission's findings. Under these circumstances "We are not called upon to examine the evidence in order to resolve opposing contentions as to what it shows or to spell out and state such conclusions of fact as it may permit. The Commission is the fact-finding body * * *" Florida v. United States, 282 U. S. 194, 215.

We find also that many of the Commission's findings, with respect to preference and prejudice as between persons and localities, lack sufficient definiteness and specificity to be significant. Thus the Commission refers to a certain shipment of 970 pounds of mattresses and box springs from Spokane to Missoula on which the first-class rate of $2.03 was charged. It proceeds: "If a similar shipment *were made* from Billings to Helena, the rate would have been $1.54 * * *" (Emphasis added.) Note that the similar shipment is purely hypothetical and the statement is in the subjunctive mode. Unless such shipments are found to have been made, there cannot be discriminatory prejudice. We think that a mere finding as to discrepancies in published rates without finding that shipments have been made in accordance with the differing rates are without significance. Numerous insufficient references of this kind are in the Commission's report. Thus the Commission compares rates on carloads of coal from Bearcreek, Montana, to Heron, Montana, a distance of 545 miles, with similar rates to

Clark's Fork, Idaho, 559 miles. We are not advised as to how many carloads of coal were shipped under these rates to these points or whether any carload of coal was ever shipped from Bearcreek to either Heron or Clark's Fork. Findings are made as to disparity in rates on molasses shipped from a sugar mill at Chinook, Montana, to Billings on the one hand, and to Idaho Falls, Idaho, on the other. The Court probably may take judicial notice of the fact that the Chinook factory is now located in the State of Washington.

But in any event, wholly apart from the matters mentioned, we adhere to our former holding that the findings as to preference and prejudice as between persons and localities will not sustain the general order now before us.

It will be noted that notwithstanding what the Supreme Court said in the Georgia Comm. case, supra, in North Carolina v. United States, supra, at page 513, the Supreme Court reaffirmed what it had said in Railroad Commission v. Chicago B. & Q. R. Co., 257 U. S. 563, to the effect that a general sweeping order against all intrastate rates may not be predicated upon findings of discrimination against particular localities and business groups made by the Commission under the clause about "persons" and "localities", which is a restatement of the Doctrine of the Shreveport case, 234 U. S. 342. As stated in Railroad Commission v. Chicago B. & Q. R. Co., supra: "In such a case, the saving clause by which exceptions are permitted, cannot give the order validity."

For the reasons stated, both here and in our former opinion, we find that the order, the findings and the report of the Commission, now before us, lack the essential determination and finding of fact to which we have previously referred, and that such lack is not supplemented by any of the matters herein referred to. In short, we find that the Commission has made no finding as to what amount of revenue, if any, was required from intrastate traffic in Montana to enable the railroads here affected to operate efficiently. Accordingly, for the reasons and on the grounds stated, both in this and in our former opinion, both of which are hereby adopted as the findings of this Court, we hold and conclude that the order here reviewed is not supported by the necessary findings of the Commission and that the same is void and in excess of the powers of the Commission. A permanent injunction will issue accordingly.

Dated this 13th day of August, 1952.

WALTER L. POPE
Circuit Judge

CHARLES N. PRAY
W. D. MURRAY
District Judges

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HAROLD B. WILLEY, Clerk

Supreme Court of the United States

OCTOBER TERM, 1952

NO. 9

WILBUR C. KING, JERRY W. CARTER, and RICHARD A. MACK, as and constituting the FLORIDA RAILROAD AND PUBLIC UTILITIES COMMISSION,

Appellants

vs.

THE UNITED STATES OF AMERICA,

Appellees

and

INTERSTATE COMMERCE COMMISSION,

Intervening Appellee

Appeal from the United States District Court for the Northern District of Florida

---

PETITION FOR REHEARING OF OPINION AFFIRMING JUDGMENT OF DISTRICT COURT

LEWIS W. PETTEWAY,
Counsel for Appellants.

In the Supreme Court of the United States

OCTOBER TERM, 1952
NO. 9

WILBUR C. KING, JERRY W. CARTER, and RICHARD A. MACK, as and constituting the FLORIDA RAILROAD AND PUBLIC UTILITIES COMMISSION, *Appellants*	**Appeal from the United States District Court for the Northern District of Florida**
vs.	
THE UNITED STATES OF AMERICA, *Appellees*	
and	
INTERSTATE COMMERCE COMMISSION, *Intervening Appellee*	

PETITION FOR REHEARING OF OPINION AFFIRMING JUDGMENT OF DISTRICT COURT

Wilbur C. King, Jerry W. Carter, and Richard A. Mack, as and constituting the Florida Railroad and Public Utilities Commission, Appellants, by their undersigned attorney respectfully pray that this Court grant rehearing of its opinion of December 22, 1952, affirming the judgment of the Northern District Court of Florida, and that on rehearing said judgment be reversed.

The far-reaching implications of said opinion, its judicial enlargement of the Interstate Commerce Commission's jurisdiction over state-prescribed rates, and the

approval by this Court of the Commission's unwarranted invasion of state sovereignty have disturbed the state regulatory agencies to such an extent that the National Association of Railroad and Utility Commissioners has been directed to file with this Court a statement in support of this petition for rehearing and the following individual state regulatory agencies have requested these Appellants to join them in this petition:

California Public Utilities Commission
Arizona Corporation Commission, Phoenix
Public Utilities Commission, Denver, Colorado
Connecticut Public Utilities Commission, Hartford
Georgia Public Service Commission, Atlanta
Hawaii Public Utilities Commission, Honolulu
Idaho Public Utilities Commission, Boise
Louisiana Public Service Commission, Baton Rouge
Massachusetts Department of Public Utilities, Boston
Minnesota Railroad and Warehouse Commission, St. Paul
Montana Board of Railroad Commissioners, Helena
Public Service Commission of Nevada, Carson City
State Corporation Commission of New Mexico, Sante Fe
Public Utilities Commissioner of Oregon, Salem
Public Utility Administrator, Providence, Rhode Island
South Carolina Public Service Commission, Columbia
Railroad and Public Utilities Commission, Nashville, Tenn.
Washington Public Service Commission, Olympia
New Jersey Board of Public Utility Commissioners

With the Court's permission, Appellants desire to comply with the request of said state agencies and respectfully

pray that they be considered as parties to this petition for rehearing.

Reasons for Granting Rehearing

1. In the underlying rate proceedings (*Ex Parte 162 and 166*) when the Interstate Commerce Commission was considering the application of the nation's railroads for general increases in *interstate* rates, the Commission said that its estimate of increased revenues to be provided by interstate traffic was based "*upon the assumption that timely, similar adjustments will be made upon intrastate traffic.*" The Commission also said that as to rates of return on property values "*they presupposed that generally similar increases will be permitted by state authorities on intrastate traffic, or may become effective otherwise.*" The only meaning the quoted language can reasonably have is that in these general revenue proceedings to increase *interstate* rates the Commission *then and there pre-judged* any future 13th Section proceeding involving corresponding increases in *intrastate* rates. The Court's opinion herein of December 22, 1952, by recognizing and approving such action and practice by the Commission, effectively destroys the "full hearing" requirements of Section 13 (4) of the Interstate Commerce Act, renders said Section unconstitutional and void as violative of the due process clause of the Fifth Amendment of the Federal Constitution, and reduces the state regulatory agencies to mere "rubber stamps" contrary to the obvious intent and purposes of the Federal Congress as expressed in the National Transportation Policy and other pertinent provisions of the Interstate Commerce Act.

2. In said opinion the Court gave undue consideration and importance to the fact that a Committee of Cooperating

State Commissioners sat with the Commission, took part in its deliberations in the underlying interstate general revenue cases (*Ex Parte 162 and 166*), and concurred in the Commission's reports. Participation in these proceedings by a Committee of Cooperating State Commissioners is little more than a courtesy accorded the state agencies. The Cooperating State Commissioners have no vote in the proceedings and their participation in general revenue interstate rate cases as mere observers should not prejudice the rights of individual states in subsequent 13th Section proceedings involving intrastate rates.

3. The Court's opinion of December 22, 1952, in effect, considers the Interstate Commerce Commission's authority over intrastate rates to be the same as its authority over interstate rates in revenue cases; whereas, Section 13 (4) of the Interstate Commerce Act, from which the Commission derives its sole jurisdiction over intrastate rates, was primarily intended by Congress as a vehicle for removing discriminations against interstate commerce. Now, as broadened by the Court's opinion, said Section permits the private property of intrastate freight shippers, even in the absence of discrimination against interstate commerce, to be taken without due process of law and devoted to a public use; that is, the maintenance of a public transportation system for the postal service and the national defense whenever the continued operation of that transportation system is threatened by losses incurred in the rendition of transportation services in nowise related to the transportation of freight.

4. Congress has consistently protected and preserved the power and authority of the states to regulate intrastate commerce. This Court has said that *no Congressional*

legislation indicates any purpose to interfere with state-prescribed intrastate rates in the *absence of the prejudice or discrimination prohibited* by Section 13 of the Interstate Commerce Act. Heretofore, it has been universally understood by courts and commissions, alike, that the power of the Interstate Commerce Commission to alter intrastate rates comes into play only when those rates injuriously affect interstate transportation. That is the position this Court took in 1945 in the North Carolina case. There has been no intervening legislation by the Congress. The Commission's powers over intrastate rates have not been extended since that time by Congressional act. However, the Court's opinion of December 22, 1952 has now extended the power of the Commission far beyond the ability of Congress to legislate. *Constitutional limitations* upon the Congress would not permit specific legislation designed to destroy state regulation of intrastate rates. There can be no effective state regulation of intrastate rates so long as the Court's opinion of December 22, 1952 continues in force. The opinion should be reversed and state sovereignty in matters affecting intrastate rates should be permitted to continue in effect.

5. The Court's opinion apparently recognizes and does not reverse the Court's former opinion in the North Carolina case. The opinion here attempts to distinguish the findings in the North Carolina case and findings in the present case. In the North Carolina case the Commission found that the interstate fares were just and reasonable; that the intrastate fares were lower than the interstate fares and were not contributing their fair share to the revenues required to enable the railroads to render adequate and efficient transportation service; that conditions affecting interstate and intrastate travel were substantially

the same; that the maintenance of the lower intrastate fares caused unreasonable preference of intrastate commerce and unjust discrimination against interstate commerce; and that the findings were without prejudice to the right of the state to apply for modifications wherever justified. We hesitate to say that the Court overlooked the striking similarity between the findings in the two cases. Frankly, we can see no fundamental difference in the basic findings, and so we respectfully request the Court, if it does in fact adhere to its opinion in the North Carolina case, to carefully review the findings in the present case and the findings in that case. If the North Carolina opinion still stands, then we submit that the opinion in the present case should be reversed on rehearing because fundamentally the Commission's action in each case rests on a mere disparity in interstate and intrastate rates.

Conclusion

For the reasons set forth above, and in the briefs and pleadings herein, it is respectfully urged that rehearing be granted and that, upon such rehearing, the judgment of the lower Court be reversed.

Respectfully submitted,

LEWIS W. PETTEWAY,
Counsel for Appellants.

CERTIFICATE OF COUNSEL

I hereby certify that the foregoing petition for rehearing is presented in good faith and not for delay and is restricted to grounds specified in Rule 33 of the Rules of this Court.

.....

Counsel for Appellants

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing petition upon all parties of record in this proceeding, by mailing a copy thereof properly addressed to each party as required by the Rules of Practice.

Dated at Tallahassee, Florida, this ..... day of January, 1953.

.....

Counsel for Appellants

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No. 9

IN THE

Supreme Court of the United States

OCTOBER TERM, 1952

WILBUR C. KING, JERRY W. CARTER and RICHARD MACK, as and constituting the FLORIDA RAILROAD AND PUBLIC UTILITIES COMMISSION, *Appellants*,

v.

THE UNITED STATES OF AMERICA, *Appellees*,

and

INTERSTATE COMMERCE COMMISSION, *Intervening Appellee*.

Appeal from the United States District Court for the Northern District of Florida

---

MEMORANDUM IN SUPPORT OF PETITION FOR REHEARING SUBMITTED ON BEHALF OF THE NATIONAL ASSOCIATION OF RAILROAD AND UTILITIES COMMISSIONERS, AND CERTAIN STATE REGULATORY COMMISSIONS, AMICI CURIAE.

JOHN P. RANDOLPH,
AUSTIN L. ROBERTS, JR.,
Attorneys for Said Association and Said State Commissions.
7413 New Post Office Building,
Washington 4, D. C.

January 21, 1953.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1952

No. 9

WILBUR C. KING, JERRY W. CARTER and RICHARD MACK, as and constituting the FLORIDA RAILROAD AND PUBLIC UTILITIES COMMISSION, *Appellants*,

v.

THE UNITED STATES OF AMERICA, *Appellees*,

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Appeal from the United States District Court for the Northern District of Florida

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MEMORANDUM IN SUPPORT OF PETITION FOR REHEARING SUBMITTED ON BEHALF OF THE NATIONAL ASSOCIATION OF RAILROAD AND UTILITIES COMMISSIONERS, AND CERTAIN STATE REGULATORY COMMISSIONS, AMICI CURIAE.

PRELIMINARY STATEMENT

The National Association of Railroad and Utilities Commissioners is a voluntary association, the membership of which embraces the members of the railroad and public utility regulatory commissions and boards of all the 48 States of the United States, the District of Columbia and

the Territories of Puerto Rico and Hawaii. By the Constitution of the Association either the President or the Executive Committee of the Association is empowered to direct the General Solicitor to appear on behalf of the Association (as distinguished from the individual commissions within its membership) in any proceeding pending before any court or commission in which, in the judgment of the President or Committee, appearance on behalf of the Association should be made. This memorandum is filed on behalf of the Association by direction of the President of the Association in the general public interest.

To the Honorable Supreme Court of the United States:

Come now the National Association of Railroad and Utilities Commissioners and the hereinafter listed state regulatory commissions, *amici curiae*, and present this memorandum in support of the petition for rehearing presented by the appellants in the above-entitled cause, and in support thereof respectfully show:

1. The following state regulatory commissions which are empowered to fix the intrastate rates for railroads in their respective states are concerned over the far-reaching effect of the majority decision in this cause upon the power and jurisdiction of state commissions to fix intrastate freight rates for railroads. The effect of the decision for all practical purposes is to permit the Interstate Commerce Commission under Section 13 (4) of the Interstate Commerce Act to completely supersede the jurisdiction of state commissions in fixing intrastate freight rates. Because of this concern of state regulatory commissions the National Association of Railroad and Utilities Commissioners has been authorized by its duly constituted President to file this statement in support of the petition for rehearing presented by appellants and the following individual state

commissions have authorized the National Association to join them as parties to this statement, to-wit:

Alabama	Public Service Commission
Arizona	Corporation Commission
Arkansas	Public Service Commission
California	Public Utilities Commission
Colorado	Public Utilities Commission
Connecticut	Public Utilities Commission
Georgia	Public Service Commission
Idaho	Public Utilities Commission
Iowa	State Commerce Commission
Kansas	State Corporation Commission
Kentucky	Railroad Commission
Louisiana	Public Service Commission
Maine	Public Utilities Commission
Maryland	Public Service Commission
Massachusetts	Department of Public Utilities
Minnesota	Railroad and Warehouse Commission
Missouri	Public Service Commission
Mississippi	Public Service Commission
Montana	Board of Railroad Commissioners
Nevada	Public Service Commission
New Hampshire	Public Utilities Commission
New Jersey	Board of Public Utility Commissioners
New Mexico	State Corporation Commission
North Carolina	Utilities Commission
North Dakota	Public Service Commission
Oregon	Public Utilities Commissioner
Ohio	Public Utilities Commission
Rhode Island	Department of Business Regulation
South Carolina	Public Service Commission
South Dakota	Public Utilities Commission
Utah	Public Service Commission
Vermont	Public Service Commission
Washington	Public Service Commission
Wyoming	Public Service Commission

2. This being a sweeping statewide increase in intrastate freight rates ordered by the Interstate Commerce Commission under Section 13 (4) of the Interstate Commerce Act, certain findings must be made that are supported by substantial evidence. One of the essential findings in a case

of this kind is that the intrastate operations do not produce an adequate return considering the cost of the service and the investment required to render the intrastate service. If the intrastate rates fixed by the State Commission produce such an adequate return then there is no undue burden upon interstate commerce and no discrimination against interstate commerce. Under such circumstances Section 13 (4) is not to be invoked.

If we correctly understand the record there was no concrete evidence placed before the Interstate Commerce Commission to show the investment of the railroads in their intrastate business, the cost of rendering the service or the return on investment after cost and the Interstate Commerce Commission made no finding in this respect. If such be the case then this case comes squarely within the ruling in *North Carolina* v. *United States*, 325 U.S. 507.

A statewide case of this kind involving all the interstate railroad freight rates in Florida is to be distinguished from such cases as the *Shreveport case, Houston East & West Texas Railway Company et al* v. *United States*, 234 U.S. 342 and *Illinois Commerce Commission et al* v. *United States*, 292 U.S. 474. In these cases point to point operations were shown and the varying rates between points for comparable distance both intra- and interstate were shown and the lower intrastate rates were shown to give an advantage to the intrastate shippers over the interstate shippers, thus a clear discrimination between points and persons was established by the evidence. In the case now before this Honorable Court no such showing was made. The conclusions of the Interstate Commerce Commission couched largely in the language of Section 13 (4) appear to be based in large measure upon the mere fact that the intrastate rates are lower than the interstate rates and that had the same rate been in effect intrastate as had been fixed for interstate traffic the railroads would have received $915,325.60 more revenue a year. The report of the commission designates this as a revenue loss to the railroads

without any apparent consideration of whether or not the railroads required such additional revenue in order to earn an adequate return upon their intrastate business taking into account the cost of the service and the investment in intrastate business.

If the theory of the Interstate Commerce Commission which is advanced here, that it has the power to advance intrastate freight rates for the purpose of making the same reasonable, in its judgment, from a revenue standpoint, and not for the purpose of removing discrimination as to persons or localities, is upheld by this Court, then the duly constituted authorities of the several states which are authorized by statute to fix intrastate rates in their respective states are to be completely frustrated and aborted. Due comity between the several levels of government lends strength to the credence that the Interstate Commerce Commission is not so empowered.

3. The majority opinion in this cause points out that a committee of cooperating state commissioners sat during the hearings of the general interstate freight rate case before the Interstate Commerce Commission. The existence of such cooperation, we believe, rests upon the assumption that there is a field in which the Interstate Commerce Commission cannot act. Such cooperation is in recognition of divided powers and responsibilities and for the purpose of developing the facts and reaching agreement, where appropriate, as to how their respective powers shall be exercised; for generally the record made before the Interstate Commerce Commission in the interstate freight rate hearing is submitted in evidence before the individual state commissions during hearings on respective intrastate freight rate increases. If, as asserted here, the federal commission is all powerful, then cooperation is reduced to a paternalistic and patronizing courtesy of the most discourteous kind and one may seriously question its desirability under such circumstances.

4. What then happens to statutory provisions for state court review of respective state commission orders to the extent that the rates involved pertain only to intrastate shipments and where the federal commission authority is upheld on a revenue basis, without a section 13 (4) showing of discrimination against persons or localities in interstate commerce? We cannot believe that the language of section 13 (4) was intended to so castigate the powers and provisions of the state courts and the state statutes. See *Alabama Public Service Commission* v. *Southern Railway Co.*, 341 U.S. 341.

5. There is a remarkable parallel in the findings of the Interstate Commerce Commission in the *North Carolina case*, supra, and the instant case. In the *North Carolina case* this court examined the evidence and found that there was not substantial evidence to support the commission's conclusions. The majority opinion in the instant case states, "No question has been raised here as to the adequacy of the evidence upon which any of the findings are based." We respectfully submit that the court should carefully examine the record evidence and ascertain whether or not there is substantial evidence which shows that the revenue derived from the intrastate rates fixed by the Florida Commission is insufficient to produce an adequate return upon the intrastate business considering the cost of the intrastate operations and the investment in such business. Mr. Justice Douglas appears to be of the opinion that the record evidence not only does not make this required showing but that on the contrary the record shows the intrastate revenues are ample to carry their fair share of the load. Concerning this question the dissenting opinion states: "Of course, if intrastate freight operations fail to produce an adequate return as determined by reference to the cost of the intrastate operations and the investment in the intrastate business, interstate commerce is discriminated against. But there is no such failure in this case. Intrastate freight operations in Florida are amply profitable and carry their fair share of the load." If this statement which

was concurred in by Mr. Chief Justice Vinson be true, and it is inconceivable that the statement would be made if not true, then this alone gives ample reason why the petition for rehearing should be granted so that the court may carefully examine the record on this point and determine the adequacy of the evidence in this respect. If the record supports this statement by Mr. Justice Douglas, then as stated by Mr. Justice Black in his dissent, the *North Carolina case* is controlling and the order of the Interstate Commerce Commission in the instant case should be reversed.

CONCLUSION

It is respectfully urged that the petition for re-hearing be granted and that the order of the Interstate Commerce Commission be, upon further consideration, reversed.

Respectfully submitted,

JOHN P. RANDOLPH,
AUSTIN L. ROBERTS, JR.,

Attorneys for the state commissions heretofore listed and the National Association of Railroad Utilities Commissioners, *Amici Curiae.*

7413 New Post Office Building,
Washington 4, D. C.

January 21, 1953.

Certificate of Counsel

We, attorneys for the National Association of Railroad and Utilities Commissioners and the above-listed State regulatory commissions, *amici curiae*, do hereby certify that the foregoing memorandum in support of the petitions for rehearing in this cause is presented in good faith, and not for delay.

JOHN P. RANDOLPH,
AUSTIN L. ROBERTS, JR.,
Attorneys for Said Association and Said State Commissions.